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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

WALTERS GARDENS, INC.,	OPPOSITION	N NO. 91153755	
Opposer,) vs.) PRIDE OF PLACE PLANTS, INC.,) Applicant.)	Mark: Serial No.: Filed:	PIILU 76,201,447 January 29, 2001	
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Deposition of Brewster Rogerson – pgs. 7-17, 22, 25, 42, 49-52
Deposition of Maurice Horn – pgs. 12, 14, 24, 26-27, 30, 31-38
Deposition of Christopher Hansen – pgs. 11-12, 28, 44-45.
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Article entitled "A nip here and there just the tonic for tired shrubs in need of pruning" by John VandeWater. Published in Home & Garden Section of the Star-Ledger newspaper in Newark, New Jersey. Identified by Bates numbers WG0265 and WG0266.
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Article entitled, "Christmastime brings its own surprices". Article published in the Features Section, Section E of the December 22, 2002 edition of the Alexandria Daily Town Talk newspaper. Author Lilly Rabalais. Identified in Bates numbers WG0262-WG0264 and also as

WG0421-WG0422.

Printed Publication - The International Clematis Register and Checklist 2002. Pages 7-14, 253, 355-367. Pertinent sections of the publication identified in Bates numbers WG0001 through WG0013 and WG0363 through WG0371. Checklist is published by the Royal Horticultural Society. Refer to Page 253 of the checklist. Page 363 of the text makes reference to Aili and Uno Kivistik as the breeders.

Article entitled, "Versatile Clematis Colors the Seasons" by Joan Hinkemeyer and published in the Friday, May 28, 2004 Gardening Spotlight Section of the Rocky Mountain News newspaper. Identified in Bates numbers WG0401, WG0402 and WG0403.

1995 publication entitled, International Code of Nomenclature for Cultivated Plants, edited by Trehane et al., and published by Quarterjack Publishing. Published 1995 and assigned ISBN 0 948117 X. Pages 6-14, 19-25 and 49 are relied upon. Opposer makes special reliance upon Articles 2 through 4, Article 7, Article 17 regarding the form of names of cultivars and page 49 designating the Royal Horticultural Society as the International Cultivar Registration Authority (ICRA). Identified in Bates numbers WG0086 through WG0182.

"Choosing your Clematis", authored by John Howells. Published 2000 and assigned ISBN 1 870673 37 9. The cover and inside pages, page 57 and 126 will be relied upon. Identified in Bates numbers WG0355 through WG0362. Page 126 of the text shows that "Piilu" is listed in Group VII, Large Late. Bates document WG0360 illustrates a photograph of the plant Clematis "Piilu" within the text.

"An Illustrated Encyclopedia of Clematis" by Mary Toomey and Everett Leeds. Pages 19-31, 318, 319, and 417-426. Identified in Bates numbers WG0346 through WG0354. Timber Press, Portland, Oregon 2001, 426 pages. ISBN No. 088192408X. Bibliographical references pages 417, 418. Contributions by Maurice Horn. See pages 318, 319 of the Director of Clematis. The variety is identified as C. 'Hagley Hybrid' X C. 'Mahrovyi" occurring in 1984. The photograph of the plant is shown on page 319.

"List Catalogue of Large Flowered Clematis", by Guido Toovere. See inside cover, page 3 and page 56. Published 1992. Refer to page 56. Identified in Bates numbers WG0415 through WG0420.

"American Nurseryman" April 15, 1999. Article on pages 40 through 44 entitled, "Climbing the Walls". Identified by Bates numbers WG0241 through WG0244.

Documents produced by Applicant in response to Opposer's Interrogatories and Requests of Admissions. See Applicants documents POP001 through POP229.

"International Clematis 1999," published annually International Clematis Society. XN.E89683. See pages 1-3 and 27. Identified by Bates numbers WG0391, WG0392, WG03093 and WG0394. The book was published by the International Clematis Society and contains 115 pages. Page 27 of the book makes specific reference to the Clematis variety 'Piilu'.

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WALTERS GARDENS, INC.,)		
)		
Opposer,)		
)	OPPOSITION	NO. 91153755
VS.)		
)	Mark:	PIILU
PRIDE OF PLACE PLANTS, INC.,)	Serial No.:	76,201,447
)	Filed:	January 29, 2001
Applicant.)		
)		
)		

Opposer's Brief

INTRODUCTION

Applicant seeks to register the term "Piilu" for use in connection with living plants. The application, Serial No. 76/201,447 was filed based under §1(b) on January 29, 2001. A date of first use has not been filed in the application. The application was published for opposition on June 16, 2002. The Opposer, Walters Gardens, Inc., filed a Notice of Opposition on December 7, 2002 after being granted an Extension of Time to Oppose filed with the Office on July 18, 2002. In its Notice of Opposition, Opposer contends that it will be damaged by the grant of the registration of the "PIILU" mark because the term is used throughout the horticulture industry as a cultivar or variety name for a specific plant in the *Clematis* genus. In short Opposer submits that the term "PIILU" cannot function as a trademark since the term always has been and is recognized today in this country as the name of a variety or cultivar for a specific genus of *Clematis* climbing vine.

Applicant has been using the mark in connection with a specific variety or cultivar of *Clematis* woody vines. Long before the application to register the mark was filed, the

Applicant has been using the mark in connection with a specific variety or cultivar of *Clematis* woody vines. Long before the application to register the mark was filed, the public has come to know this specific *Clematis* by its varietal name. Pursuant to the express prohibition set forth in the rules and Trademark Manual of Examining Procedure, wording sought to be registered as a mark for live plants comprising a varietal or cultivar name must be refused registration on grounds that the term is the varietal name of the goods and does not function as a trademark under §§1, 2 and 45 of the Trademark Act, 15 U.S.C. §§1051, 1052 and 1127.

The facts in this case are crystal clear. Also crystal clear are the rules of the United States Trademark Office when it comes to registering proper names of plants for plant material. Pride of Place Plants seeks to register the varietal name "Piilu" for use on live *Clematis* plants. Indeed the *Clematis* plants applicant is promoting (and intends to sell) under the Piilu mark have aleady been officially named *Clematis* 'Piilu" by the plant breeder, Uno Kivistik. According to MPEP § 1202.02, the name of a plant variety or cultivar forms the proper name of that specific plant, and hence cannot attain the level of distinctiveness sufficient to identify a particular source. In such instances registration should not be granted for such terms.

STATEMENT OF FACTS

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On January 21, 2001, Applicant Pride of Place Plants, Inc. filed an "intent-to-use" application to register the term "PIILU" on the principal register of the United States Trademark Office in International Class 031 for "live plants." Opposer's Ex. 1. The application, Serial No. 78/201,447, was published for opposition in the *Official Gazette*, dated June 18, 2002. The Opposer, Walter Gardens, Inc. filed a Notice of Opposition to Applicant's registration on December 7, 2002 within the extended period for taking such action. Opposer's Ex. 2. In its Notice of Opposition, Opposer contends that it will be damaged by the grant of the registration of the "PIILU" mark because the term is a generic name used to identify a specific plant cultivar or variety within the genus *Clematis*.

Within its testimony period, Opposer made of record, pursuant to Rules 2.122 printed publications available to the general public in libraries or of general circulation among members of the public or that segment of the public which is relevant under an issue in a proceeding. Opposer also made of record official records of business including that Applicant. Further under Rule 2.123 Opposer also made of record the testimony of Applicant and others knowledgeable of the industries use of the term. The documents and things comprising Opposer's record are set forth in the preceding "Opposer's Record" at the beginning of this brief.

In its Answer to the Notice of Opposition, Applicant merely denies the allegations set forth in the Notice of Opposition. In addition, Applicant contends as an affirmative defense that the Opposer is barred from relief under the equitable doctrines of laches, acquiescence and estoppel. To the best of Opposer's knowledge, Applicant only made of record the deposition testimony of Mr. Rick Sorensen, the principal owner of Applicant. There Applicant contends that the term "PIILU" is not used to identify any particular plant and that the term has always

been intended to be used as a trademark as a result of Applicant's use of the ™ symbol on a limited collection of business records. See Sorensen Dep. pgs. 2-24.

ISSUES

- 1. Can the foreign translation of an English cultivar or variety name act as a trademark for the same plant cultivar or variety?
- 2. Is the term "PIILU" recognized by the public as the variety or cultivar name of a specific plant in the genus *Clematis*?
- 3. Were prudent steps taken during examination of the application to prevent Applicant from registering a variety or cultivar name?

Opposer contends that if the answer to any one of issue 1 - 3 is negative, then registration of the application cannot be sustained.

ARGUMENT

'Piilu' Is Estonian Term For Clematis Cultivar "Little Duckling."

Plant cultivar or variety names are tantamount to the generic name of the plant or seed by which such specific plant is known to the public. T.M.E.P. § 1202.12 (3d ed. May 2003). As such, a cultivar name does not function as a trademark under §§ 1, 2, and 45 of the Trademark Act, 15 U.S.C. §§ 1051, 1052, and 1127. See Dixie Rose Nursery v. Coe, 131 F.2d 446, 55 USPQ 315 (D.C. Cir. 1942), cert. denied 318 U.S. 782, 57 USPQ 568 (1943); In re Hilltop Orchards and Nurseries, Inc., 206 USPQ 1034 (TTAB 1979); In re Farmer Seed & Nursery Co., 137 USPQ 231 (TTAB 1963); In re Cohn Bodger & Sons Co., 122 USPQ 345 (TTAB 1959). See id. The facts establishing that the term 'Piilu' is equivalent to the English cultivar name for a plant in the genus Clematis, and entitling Walters Gardens to judgment is proven simply by Applicant's own admission.

Mr. Sorensen testified that "Little Duckling" is the cultivar name for a specific plant in the genus Clematis. Mr. Sorensen further testified that the literal Estonian translation for "Little Duckling" is "PIILU." See Sorensen Dep. pg. 2, ln. 17-19 and pg. 48, ln. 3-9. This is corroborated by the history of the application where Applicant provided that the translation for "PIILU" was "Little Duckling." When further asked under direct if he was familiar with "something called Clematis Little Duckling Piilu," he responded in the affirmative and stated that "[i]t's a plant that we currently manage on behalf of the Kivistik family in Estonia." Sorenson Dep. pg. 1, ln. 24 to pg. 2, ln. 4 (emphasis added). He did not state that it was a collection of plants but rather "a plant." Under cross-examination during his testimony Mr. Sorenson was asked if the term Piilu was used in connection with a genus of Clematis, would that identify a specific plant or would that be associated with a specific plant in the genus Clematis. He responded by answering that "...once the trademark went through that then it could be identified as a plant in the genus Clematis." See Sorenson Dep. pg. 28, ln. 12 - 22. The Board is also referred to the series of questions and answers set out on page 29 through the middle of page 31 for further testimony that the term "PIILU" apparently is used only in connection with one particular plant within the Clematis genus. In short, many questions were asked of Mr. Sorenson regarding the use of the term "PIILU." The following series of questions best summarizes the only conclusion available to the Board that the term is used for a specific plant and no others:

- Q. A lot of questions have been asked regarding the term Piilu, and I just want to confirm that the term Piilu is a name that is used in association with a specific cultivar of Clematis. Is that true?
- A. No, it's false.
- Q. It is not used with a specific cultivar of Clematis?
- A. It's false.
- Q. Do you use the term Piilu on other cultivars of Clematis?
- A. No.

Q. If you do not use it with other cultivars of Clematis, how many cultivars of Clematis is the name Piilu associated with?

A. One.

Sorenson Dep. pgs. 135-136. Clearly both "Little Duckling" and "PIILU" are used interchangeably even by the Applicant to identify a particular *Clematis* plant.

The Lanham Act bars the registration of generic names as trademarks. See 15 U.S.C. § 1052; San Francisco Arts & Athletics, Inc. v U.S. Olympic Comm., 483 U.S. 522, 531, 107 S. Ct. 2971, 2978, 97 L. Ed. 2d 427 (1987). In the context of plant names, even if a cultivar name was originally arbitrary, it describes to the public a plant of a particular sort, not a plant from a particular source. See T.M.E.P. § 1202.12 (citing Dixie Rose, 131 F.2d at 447, 55 USPQ at 316). Once the public makes that type of association, even a previously valid trademark loses its protection. See, e.g., Saxlehner v. Wagner, 216 U.S. 375, 30 S. Ct. 298, 54 L. Ed. 2d 525 (1910).

Opposer submits that even the Applicant in this case makes no mistake that the term sought to be registered does not indicate source, but rather one type of plant; a specific plant within a specific genus. There can be no doubt from a preponderance of the evidence that the cultivar name "Little Duckling" is "PIILU" in Estonian, and both are used to identify a plant of a particular sort, not a plant from a particular source.

The Public Recognizes "PIILU" As A Specific Cultivar Of Clematis Plant.

Varietal or cultivar names are designations given to cultivated varieties or subspecies of live plants or agricultural seeds. They amount to the generic name of the plant or seed by which such variety is known to the public. These names can consist of a numeric or alphanumeric code or can be a "fancy" (arbitrary) name. The terms "varietal" and "cultivar"

may have slight semantic differences but pose indistinguishable issues and are treated identically for trademark purposes. *See* TMEP § 1202.12.

In the current case, Opposer has made of record numerous documents under Rule 2.122(e) including books and periodicals, available to the general public in libraries or of general circulation among members of the public or that segment of the public which is relevant under an issue in a proceeding. All of the books and periodicals have been acknowledged by Opposer's witnesses (as well as Applicant) to constitute reputable and respected works on the subjects of horticulture and plants within the genus *Clematis*. *See e.g.* Sorenson Dep. pgs. 71-80; Rogerson Dep. pgs. 8-17, 42, and 49-52; and Horn Dep. pgs. 24, 31-38. Also made of record are the official records of Applicant's business. In particular Applicant introduced copies of agreements between Applicant and third parties wherein Applicant licensed others rights to "... propagate and sell a variety Clematis Piilu in North America..." See Sorenson Dep. pgs. 35, 43; Sorenson Ex. 2 through 12. Here Applicant has not only identified the *Clematis* 'PIILU' as a variety, but he was authorizing others to reproduce and sell the plant under the 'PIILU' variety name. *Id*.

Applicant further testified that he obtained the exclusive rights to propogate and sell *Clematis* 'PIILU" in North America with the right to grant a sub-license to growers. See Sorenson Ex. 2-12. These exclusive rights were stated to have been given to Applicant through the plant breeder living in Estonia. *Id.* The record tends to give credit to the plant breeder for registering the cultivar or variety name "PIILU" with the official agency within Estonia charged for recording new plants. The plant breeder's registration of "PIILU" as a variety of *Clematis* should be given considerable weight to show the intent of how this plant is to be known.

Opposer directs the Board's attention to the host of publications that were available to the public in this country long before Applicant filed its intent-to-use application.

Most telling, is the Applicant's own article published April 15, 1999 in American Nurseryman. There, appearing on pages 40 through 44 of the article entitled, Climbing the Walls, Mr. Sorenson describes woody climbing vines and specifically mentions Clematis 'PIILU' as a variety of climbing Clematis. Opposer Ex. 3. Other publications in existence prior to the filing of the application include an article published in the Home & Garden Section of the Star-Ledger newspaper in Newark, New Jersey. There, on February 16, 2000, the author, John Vande Water specifically identifies "PIILU" as a variety of Clematis emanating from Europe. Opposer Ex. 4. Author John Howells, a person characterized by Opposer's witnesses as one of the most knowledgeable persons on the genus Clematis, published accounts of Clematis 'PIILU' in his book entitled, Choosing your Clematis published in 2000 long before the filing date of the application. Opposer's Ex.5. Other publications available to the public prior to the filing date of the application and that disclose information on Clematis 'PIILU' include the books entitled, "List Catalogue of Large Flowered Clematis," by Guido Toovere, and "International Clematis 1999," published by the International Clematis Society. Both references are significant because they both contain references back as early as 1992 identify Clematis 'PIILU' as a recognized cultivar or variety of *Clematis* plant.

The publications are just the beginning of references specifically identifying the term "PIILU" to be directly associated with a particular plant. Other publications published at about the same time of the filing date of the application or shortly thereafter cannot be ignored, for it should be clear that the research that went into those publications was most likely collected by the authors long before the filing date of the "PIILU" application. In particular, these include the widely distributed, "International Clematis Register and Checklist 2002," published by the Royal Horticultural Society and appointed by the International community as the International

Cultivar Registration Authority in 1994. There on page 253 of Opposer's Ex. 6, the register describes "PIILU" as officially registered in 1984 by Uno and Aili Kivistik through the Estonian Plant Production Inspectorate Variety Control Department. Another text of equal value is the book entitled, "An Illustrated Encyclopedia of Clematis." by Mary Toomey and Everett Leeds, both scholars and experts in the field of the genus Clematis. The Toomey/Leeds book was published in the same year the application was filed, but here again the research was concluded long before the publication date, strongly suggesting that the term "PIILU" had already been widely recognized and associated with a particular Clematis plant. Opposer's Ex. 7. All of these publications are consistent in illustrating that the term "PIILU" had come prior to the filing date of the application, to be associated with a particular plant within the genus Clematis. There appears to be no dispute on that issue by Applicant as well, for in response to discovery requests propounded by Opposer, Applicant states unambiguously that "PIILU" is being used by Applicant in association with the sale and promotion of one type of cultivar of Clematis. Opposer's Ex. 8, pg. 8, Q. 8.

To further prove that members of the industry and purchasing public have come to recognize "PIILU" as a particular sort, not a plant from a particular source, Opposer has made of record the testimony of several individuals, all very familiar with the industry and marketing of plant material to the public. Here Opposer again refers to the testimony of Mr. Sorenson, the principal owner of Applicant. Referring to Sorenson Dep. pgs. 29-31, the Board will glean that "PIILU" is only associated with woody climbing vines within the genus *Clematis* having single or double flowers, a limited range of flower colors, leaves that are dark green, ternate or rarely pinnate, and originating from Estonia. This appears to be quite specific to the particular type of plant, and not to Applicant as a source for the plant.

Opposer also introduced the testimony of Mr. Brewster Rogerson, characterized in the media as one of the most knowledgeable persons in the western hemisphere on the genus Clematis. See Rogerson Dep. pgs. 7-17. For over 30 years, Mr. Rogerson collected different varieties or cultivars of *Clematis* and devoted himself to the study of these plants. He is also a frequent presenter at gardening events on *Clematis*, and as a result fields a number of questions from the public. In response to questions by Opposer on nomenclature, Mr. Rogerson stated that the use of variety, cultivar or hybrid names ".. is the most common way people have of referring to clematis." See Rogerson Dep. pg. 22. In his own experience when hearing or seeing "PIILU" used, it conjures the recollection of a hybrid of *Clematis* produced by Kivistik in Estonia. In fact Rogerson obtained the plant directly from Kivistik in the 1997. See Rogerson Dep. pg. 25.

Opposer further introduced the testimony of Maurice Horn, another enthusiast of plant material in the *Clematis* genus with a nursery located in Oregon that sells to the public. Approximately ninety-five percent of his business is national. Daily, he interacts with customers regarding orders and selection of plant material, including *Clematis*. See Horn Dep. pg. 12. The names of the plant conform to the rules of international nomenclature as contained within the text entitled, "The International Clematis Register and Checklist 2002," published by the Royal Horticultural Society in England. See Horn Dep. pg. 14.

In 1998, Horn co-authored an article appearing in the book entitled, "International Clematis Society." The article focused on the Kivistik farm and mentioned Clematis "PIILU" as one of his greatest achievements. See Horn Dep. pg. 26. Prior to writing the article Horn and others had the pleasure of visiting the Kivistik farm and was given access to the Kivistik plants

for the entire day including *Clematis* "PIILU." See Horn Dep. pg. 27. Today *Clematis* 'PIILU' is now generally offered by nurseries throughout the United States. See Horn Dep. pg. 30.

Opposer has also made of record, the testimony of another nurseryman located on the east coast of the United States. Christopher Hansen is the Director of Horticulture for Wayside Gardens, the party responsible for distributing nationwide 2.5 million copies of the Wayside Garden's Catalogue. See Hansen Dep. pg. 11. Hansen has a Bachelor of Science degree in horticulture and a minor in botany from Iowa State University. See Hansen Dep. pg. 12.

Wayside Gardens sell *Clematis* plants directly to the public and through mail order services. Hansen testifies that on September 17, 1998 the nursery received correspondence from Applicant providing a press release announcing the availability of *Clematis* 'PIILU.' Based upon Hansen's experience in the field and his training, he immediately came to recognize that the variety or cultivar name was intended to be "PIILU" as it was contained within the traditional single quotation format. See Hansen Dep. pg. 28. Toward the end of 1998, Wayside Gardens began to market *Clematis* 'PIILU' to the public through its catalogue. See Hansen Dep. pgs. 44-45. Copies of the catalogues from Wayside Gardens dating back to at least 2000 contain references to *Clematis* 'PIILU' in the traditional format for naming nomenclature described by Hansen. Opposer's Ex. 9.

Another example of how "PIILU" has become associated with a specific *Clematis* plant is through the numerous awards accorded the plant. Conducted apparently by disassociated groups, these awards further strengthen the publics awareness of the variety name.

Opposer has by a preponderance of the evidence shown that the public has come to associate the term "PIILU" with a particular plant within the genus *Clematis* when that term is

used in connection with living plants. This occurred by the plant breeder's own use and registration of the variety name shortly after the plant was discovered. Other experts in the field authored books on the genus of plants using the variety name of record to identify the plant. Today the appropriate cultivar or variety name is being used in connection with the sale of *Clematis* "PIILU." Applicant on the other hand has introduced no evidence whatsoever during his testimony period to contradict the obvious fact that the term PIILU has only been used in association with a particular plant, and not as the identity of a particular source. This is certainly not the case when the term is being used by other nurseries across the nation containing no mention of Applicant.

The Examiner Failed To Ascertain If Mark Was Variety Or Cultivar Name.

Whenever an application is filed to register a mark containing wording for live plants or agricultural seeds, the examining attorney <u>must</u> inquire of the applicant whether the term has ever been used as a varietal name, and whether such name has been used in connection with a plant patent, a utility patent, or a certificate for plant variety protection. *See* 37 C.F.R. §2.61(b)(emphasis added). The examining attorney should also undertake an independent investigation of any evidence that would support a refusal to register, using sources of evidence that are appropriate for the particular goods specified in the application (*e.g.*, laboratories and repositories of the United States Department of Agriculture, plant patent information from the United States Patent and Trademark Office, a variety name search of plants certified under the Plant Variety Protection Act listed at <u>www.ars-grin.gov/npgs/searchgrin.html</u>. *See* TMEP § 1202.12.

A review of the application file history reveals no such inquiry by the examining attorney. Rather the first communication from the Office states that no registered or pending

marks were identified that would bar registration of the mark under the Act. The only requirement imposed by the Office was to include a translation of PIILU into English. The record is entirely devoid of any questions concerning any prior use of the mark on living plants as a variety or cultivar name.

In light of the strict requirement imposed by the United States Trademark Manual of Examining Procedure § 1202.12, and the clear absence of compliance with the procedure, Opposer submits that the application is defective and at the very least should be remanded back to the examination section for further review. Particularly, inquiring about the historical use of the term "PIILU" as a variety or cultivar name used on living plants, namely *Clematis*.

Even assuming that PIILU has been consistently used as a trademark, a fact that Applicant cannot prove, Applicant's inability to provide a common or generic name for the cultivar sold in association with the alleged PIILU mark further demonstrates that 'Piilu' is the generic name for a cultivar of *Clematis* plant. If PIILU is a trademark (i.e., not generic), what is the generic name for the cultivar that it does describe? Tellingly, Applicant "does not know the answer."

In the context of plant names, even if a cultivar name was originally arbitrary, it describes to the public a plant of a particular sort, not a plant from a particular source. See T.M.E.P. § 1202.12 (citing Dixie Rose, 131 F.2d at 447, 55 USPQ at 316). Once the public makes that type of association, even a previously valid trademark loses its protection. See, e.g., Saxlehner v. Wagner, 216 U.S. 375, 30 S. Ct. 298, 54 L. Ed. 2d 525 (1910)(emphasis added).

CONCLUSION

The record overwhelmingly establishes that the term "PIILU" has become

recognized as the acceptable cultivar or variety name for a particular plant within the genus

Clematis. Not only did Applicant represent that such constituted a cultivar or variety name early

on in marketing of the plants, but the public has adopted the name as the official designation for

those plants. Accordingly, in light of the current status attributed to the term, "PIILU" is not

distinctive to act as a trademark. In addition the record in the application does not reflect any

inquiry by the examining attorney on whether the mark has ever been used as a cultivar or

variety name for any living plants. Should the TTAB not find in favor of Opposer on the issues

that the mark has been accepted as a variety or cultivar name, Opposer submits that the record

provides ample basis for remanding the application to the examining attorney for a finding on the

inquiry overlooked in the initial examination.

For the reasons stated above, and due to the overwhelming evidence provided in

support of this Brief, Walters Gardens respectfully requests that the TTAB sustain the opposition

and thereby deny Applicant's attempt to register PIILU as a mark for live plants.

By

Opposer Walters Gardens, Inc.

Dated: July 15, 2005

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		07-18-2005 U.S. Patent & TMOfc/TM Mail Rcpt Dt. #11

EXHIBITS IN SUPPORT OF OPPOSER'S BRIEF

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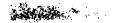
EXHIBIT 1
Walters Gardens, Inc. v.
Pride of Place Plants, Inc.
Opposition No. 91153755
KANE & CO., PLC

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76201447

TRADEMARK APPLICATION SERIAL NO.

U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE FEE RECORD SHEET

02/02/2001 TSMITH 00000002 76201447

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325.00 OP

PTO-1555 (5/87)

TRADEMARK 41415/VGG/P622

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE INTENT-TO-USE APPLICATION TRANSMITTAL

EXPRESS MAIL NO. <u>EL599609717US</u>

Box NEW APP FEE Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513

January 29, 2001

Commissioner:

Enclosed is a Section 1(b) intent-to-use application for registration of a trademark comprised of the following:

1. Application and drawing for:

MARK

PIILU

APPLICANT:

Pride of Place Plants, Inc.

CLASS(ES) :

31

2. Our check for \$325.00 for the filing fee.

The Commissioner is authorized upon filing or during prosecution of this application to charge any additional fees which may be required or credit any overpayment of fees to Deposit Account No. 03-1728. Please show our docket number with any Deposit Account transaction. A copy of this letter is enclosed.

Please address all correspondence to CHRISTIE, PARKER & HALE, LLP, P. O. Box 7068, Pasadena, California 91109-7068. Customer Number: 23363

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Vincent G. Gioia

626/795-9900

VGG/ydm

YDM IRV1042040.1-*-1/26/01 12:13 PM

Express Mail No. EL599609717US

TRADEMARK Docket No. 41415/VGG/P622

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION FOR TRADEMARK REGISTRATION UNDER SECTION 1(b) PRINCIPAL REGISTER

MARK

PIILU

CLASS(ES):

31

ASSISTANT COMMISSIONER FOR TRADEMARKS:

Applicant Pride Of Place Plants, Inc. is a Canadian corporation, with offices at 674 Cromarty Avenue, Sidney, British Columbia V8L 5G6, Canada.

Applicant has a bona fide intention to use the mark shown in the accompanying drawing in commerce on or in connection with goods as follows: LIVE PLANTS; and requests that the mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946, as amended.

DESIGNATION OF DOMESTIC REPRESENTATIVE ~

Christie, Parker & Hale, LLP, whose postal address is P.O. Box 7068, Pasadena, California 91109-7068, U.S.A., is hereby designated applicant's domestic representative upon whom notices or process in proceedings affecting the mark may be served.

POWER OF ATTORNEY

Applicant hereby appoints the following members of the Bar and attorneys of the law firm Christie, Parker & Hale, LLP, with full power of substitution and revocation, to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the Certificate:

R. W. Johnston D. Bruce Prout

David A. Plumley Wesley W. Monroe

Patrick Y. Ikehara Mark Garscia

Robert A. Green Alan M. Kindred

Docket No. 41415/VGG/P622

Hayden A. Carney Richard J. Ward, Jr. Russell R. Palmer, Jr. LeRoy T. Rahn Richard D. Seibel Walter G. Maxwell William P. Christie David A. Dillard Thomas J. Daly Vincent G. Gioia Theodore A. Pianko Edward R. Schwartz John D. Carpenter Gregory S. Lampert
Robert L. Toms, Sr.
James E. Doroshow
Grant T. Langton
Constantine Marantidis
Daniel R. Kimbell
Craig A. Gelfound
Syed A. Hasan
Daniel M. Cavanagh
Gary J. Nelson
Kathleen M. Olster
Josephine E. Chang
Joel A. Kauth

Peter J. Reitan
Charles R. Halloran
Raymond R. Tabandeh
Gary S. Dukarich
Theresa W. Middlebrook
Cynthia A. Bonner
Paul Heynssens
Jun-Young E. Jeon
Marc A. Karish
John F. O'Rourke
Molly A. Holman
Peter A. Nichols
Harold E. Wurst

Derrick W. Reed
Patrick S. Schoenburg
Stephen D. Burbach
David B. Sandelands, Jr.
Heidi L. Eisenhut
W. Casey Walls
Leigh O. Linder
Brian K. Brookey
Howard A. Kroll
Nicholas J. Pauley
Mark J. Marcelli

The authority under this Power of Attorney of each person named above shall automatically terminate and be revoked upon such person ceasing to be a member or associate of or of counsel to that law firm.

Please address all correspondence and the registration to CHRISTIE, PARKER & HALE, LLP, Post Office Box 7068, Pasadena, California 91109-7068.

DECLARATION

I, the undersigned, declare that I am authorized to execute this application on behalf of said applicant; that applicant has a bona fide intention to use the mark in commerce on or in connection with the goods identified in this application, and that said applicant is entitled to use such mark in commerce; to the best of my knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when applied to or used in connection with the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive; that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United

Docket No. 41415/VGG/P622

States Code, and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom.

PRIDE OF PLACE PLANTS, INC.

Date Jan 19/2001

Rick Sorenson President

VGG/ydm ydm irv1041154.1-*-12/26/00 12:43 pm

APPLICANT

: Pride of Place Plants, Inc.

ADDRESS

674 Cromarty Avenue Sidney, British Columbia, V8L 5G6, Canada

Applicant has a bona fide intention to use the mark in commerce in the form shown below.

CLASS(ES)

: 31

GOODS

: LIVE PLANTS



01-29-2001

U.S. Patent & TMQfc/TM Mail Ropt Dt. #10

PIILU

Docket No. 41415/VGG/P622 Vincent G. Gioia 626/795-9900

PUBLISHED 06/18/02



*** User: zbello ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	21955	N/A	0	oʻ	0:07	*lit*[bi,ti] and live[ld]
02	28015	N/A	0	0	0:10	*d{v}{"ckqx"}*[bi,ti] and live[ld]
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04	247	0	247	148	0:03	3 and "031"[cc]
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Session started 1/10/02 12:12:51 PM Session finished 1/10/02 12:19:08 PM Total search duration 0 minutes 24 seconds Session duration 6 minutes 17 seconds

Default NEAR limit= 1 ADJ limit= 2

Translation

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO. 76/201447 Pride Of	APPLICANT Place Plants, Inc.	_	PAPER NO.
MARK PIILU			ADDRESS:
ADDRESS VINCENT G. GIGIA CHRISTIE, PARKER & PO BOX 7068 PASADENA CA 91109-	•	MAILING DATE 05/25/01 REF. NO.	ADDRESS: Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 www.uspto.gov If no fees are enclosed, the address should include the words "Box Responses - No Fee."
FORM PTO-1525 (5-90)	U.S. DEPT. OF COMM. PAT. & TM OFFICE	41415/VGG/P6	Please provide in all correspondence: 1. Filing Date, serial number, mark and Applicant's name. 2. Mailing date of this Office action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and ZIP code.

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number: 76/201447

The assigned examining attorney has reviewed the referenced application and determined the following.

No Conflicting Marks Noted

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.

INFORMALITIES

General Inquiry on Significance

The applicant must indicate whether PIILU has any significance in the relevant trade, any geographical significance or any meaning in a foreign language. 37 C.F.R. Section 2.61(b).

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

Zachary Bello
Trademark Attorney
Law Office 111
(703) 308-9111 ext 409

TRADEGIRA LAW OFFICE :: Seriol Number: 76/201447 Marks FILH

TRADEMARK

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark : Serial No. : PIILU

Serial N Filed 76/201,447

Filled Applicant January 29, 2001

Applicant :

Pride Of Place Plants

Law Office:

111

Examiner :

Zachary Bello

Docket No. :

41415/VGG/P622

RESPONSE TO OFFICE ACTION (By Facsimile)

Box RESPONSES NO FEE Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513

Post Office Box 7068 Pasadena, CA 91109-7068 October 11, 2001

Commissioner:

This is in response to the Office Action dated May 25, 2001, in connection with the above-identified Application.

It is noted that no similar registered or pending Mark has been located which would bar registration.

Serial No. 76/201,447

In the Office Action the Trademark Examining Attorney has inquired as to the general significance of the term "PIILU." In response, Applicant submits that the term "PIILU" is an Estonian word meaning "little duckling."

In view of the foregoing Remarks, it is respectfully submitted that the Application is now in condition for acceptance, and reconsideration and acceptance are earnestly solicited. If any questions remain regarding the acceptability of the Application, the Trademark Examining Attorney is invited to contact the undersigned at the telephone number indicated below.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Vincent G. Gioia 626/795-9900

VGG/vat VAT IRV1048881,1-*-10/10/01 4:38 FM

facsimile Transmittal

Date: October 1, 2001

No. of Pages: 3 (including this cover sheet)

Fax No: 703.308.7182

PLEASE DELIVER THE FOLLOWING PAGES IMMEDIATELY TO:

Name: Assistant Commissioner of Trademarks

Law Office: 111

Examiner: Zachary Bello

Phone: 703.308.9111 x 409

From: Vincent G. Gioia

Reg. No. 19,959

Mark: PIILU; Filed January 29, 2001; Serial No. 76/201,447

Applicant: Pride of Place Plants

File: 41415/VGG/P622

I HEREBY CERTIFY THAT THE FOLLOWING PAPER(S) IS/ARE BEING SENT VIA FACSIMILE TRANSMISSION TO THE ASSISTANT COMMISSIONER OF TRADEMARKS, LAW OFFICE 111 - ON October 111, 2001.

Response to Office Action.

Valeri A. Timmering

VAT IRV1048855, I-*-10/10/01 4 40 PM

AN OFFICE 111

WOLLD DE H

Christie, Parker & Hale, LLP 350 West Colorado Boulevard Post Office Box 7068

Pasadena, CA 91109-7068 626-795-9900

Fax: 626-577-8800

confidential

For Interoffice Use Only

Return to: Valeri A. Timmering

The information in this transmission is confidential and is intended only for the use of the individual or ontity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is prohibited. If you have received this communication in error, please notify us immediately by telephone collect, and return the original message to us at the above address via U.S. mail. We will reimburse you for postage. Thank you,

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| USDA | ARS | GRIN | NPGS | New Search |

Cite as: USDA, ARS, National Genetic Resources Program. Germplasm Resources Information Network - (GRIN). [Online Database] National Germplasm Resources Laboratory, Beltsville, Maryland. Available: http://www.ars-grin.gov/var/apache/cgi-bin/npgs/html/acc_search.pl?accid=DUCKLING (10 January 2002)

Please send comments to the Database Management Unit at: <u>dbmu@ars-grin.gov</u>

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Cite as: USDA, ARS, National Genetic Resources Program. Germplasm Resources Information Network - (GRIN). [Online Database] National Germplasm Resources Laboratory, Beltsville, Maryland. Available: http://www.ars-grin.gov/var/apache/cgi-bin/npgs/html/acc_search.pl?accid=LITTLE+DUCKLING (10 January 2002)

Please send comments to the Database Management Unit at: <u>dbmu@ars-grin.gov</u>

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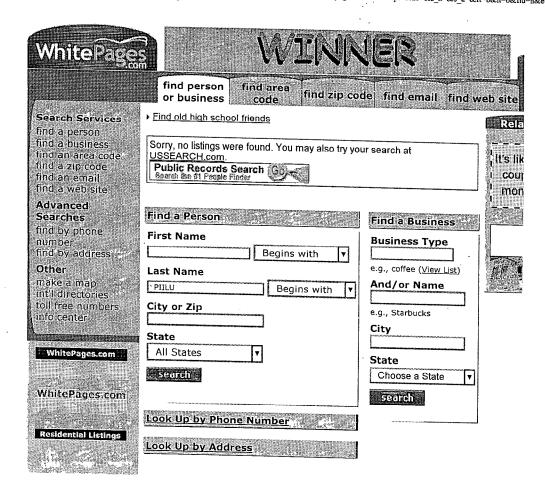
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| USDA | ARS | GRIN | NPGS | New Search |

Cite as: USDA, ARS, National Genetic Resources Program. Germplasm Resources Information Network - (GRIN). [Online Database] National Germplasm Resources Laboratory, Beltsville, Maryland. Available: http://www.ars-grin.gov/cgi-bin/npgs/html/acc_search.pl?accid=pilu (18 May 2001)

Please send comments to the Database Management Unit at: dbmu@ars-grin.gov



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*** User: zbello ***

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03	1037	N/A	0	0 .	0:09	*p{"iey"}{"l"}l{v}*[bi,ti] and live[ld]
04	6	0	6	6	0:05	*p{"iey"}{"l"}lu*[bi,ti] and live[ld]
05	2	0	2	2	0:05	*p{"iey"}{"iey"}lu*[bi,ti] and live[ld]
06	392	N/A	. 0	0	0:04	2 and "033"[cc]
07	377	N/A	. 0	0	0:03	6 and "031"[cc]
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09	190	0	.190	190	0:04	3 and "031"[cc]
10	1	0	1	1	0:05	*piilu*[bi,ti] and live[ld]
11	1	0	1	1	0:01	piilu[fm]
12	1	1	0	0	0:01	pilu[fm]

Session started 5/18/01 11:45:56 AM Session finished 5/18/01 11:54:12 AM Total search duration 0:53 minutes Session Duration 8:16 minutes

Default NEAR limit= 1 ADJ limit= 2



UNITED STATES DEPARTMENT OF COMMERCE Patent and Trac ark Office

ASSISTANT COMMISSIONER FOR TRADEMARKS 2900 Crystal Drive Arlington, Virginia 22202-3513

May 29, 2002

NOTICE OF PUBLICATION UNDER 12(a)

1. Serial No.: 76/201,447

2. Mark: PIILU

- 3. International Class(es): 31
- 4. Publication Date: Jun 18, 2002
- 5. Applicant: Pride Of Place Plants, Inc.

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a notice of allowance pursuant to section 13(b) of the Statute.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained from:

The Superintendent of Documents U.S. Government Printing Office PO Box 371954
Pittsburgh, PA 15250-7954
Phone: (202)512-1800

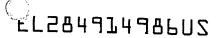
By direction of the Commissioner.

PCFD10 (REV 07/2000)

VINCENT G. GIOIA CHRISTIE, PARKER & HALE, LLP, PO BOX 7068 PASADENA CA 91109-7068

TMP&I

EXHIBIT 2
Walters Gardens, Inc. v.
Pride of Place Plants, Inc.
Opposition No. 91153755
KANE & CO., PLC



Atty. Docket No. 95043.003

CERTIFICATE OF MAILI	NG BY EXPRESS MAIL
I hereby certify that this paper, together with all enclosures in Postal Service as Express Mail, using label No. EL 284 9 Commissioner for Trademarks, 2900 Crystal Drive, Arlington,	914 986 US, addressed to BOX TTAB - FEE, Assistant
Deistenbu 11. 2002	Connie L. Carlson

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

WALTERS GARDENS, INC.	
Opposer)
. v.) Opposition No.
PRIDE OF PLACE PLANTS, INC.)
Applicant))

BOX TTAB - FEE

Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, Virginia 22202-3513

Dear Sir:

NOTICE OF OPPOSITION

Walters Gardens, Inc. ("Opposer"), a Michigan Corporation with a principal place of business at 1992 96th Avenue, Post Office Box 137, Zeeland, Michigan 49464-0137, U.S.A., hereby opposes registration of the mark PIILU that is the subject of Application Serial Number 76/201,447, published in the Official Gazette of June 18, 2002, and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer asserts as follows:

Long prior to any date of first use upon which Applicant can rely, others around the world, including those in the industry in the United States, have been using the term PIILU to refer to a specific cultivar of Clematis live plants.

- 2. Long prior to any date of first use upon which Applicant can rely, the term "PIILU" has been used generically to refer to a cultivar of Clematis marketed throughout this country by other nurseries. As a result, the term "PIILU" has become a generic term to refer to this variety of Clematis. Third parties have also offered for sale live plants identified as Clematis "PIILU" in this country since at least 1995.
- 3. Applicant has filed an intent-to-use application to register the mark "PIILU" for live plants. That application was filed on January 29, 2001, and was assigned Serial Number 76/201,447.
- 4. Applicant's mark so resembles the common name for a cultivar of Clematis plants adopted generally by the industry throughout the United States and the world. Accordingly, Applicant's mark so resembles a name previously used in the United States by others including Opposer which has become generic such that registration of the name by Applicant is likely to damage Opposer and prevent Opposer from referring to the common variety of Clematis PIILU and thus place Opposer at a disadvantage in the market place.
- 5. Moreover, Applicant's registration of the mark when used on or in connection with live plants, is likely to cause confusion, mistake, or deceive others as to the source or origin of the goods when the cultivar name is used by Applicant and others in connection with the sale of live Clematis plants.
- 6. On information and belief, Opposer believes the particular cultivar is not protected by a United States Patent in this country as the plant was offered for sale in this country more than one year prior to the filing date of any patent application, thus creating a bar to patenting of this particular variety.
- 7. On information and belief, Opposer believes Applicant is trying to protect a plant variety under the Trademark laws of the United States in light of the barring events for obtaining patent protection on the variety.
- 8. Applicant's registration should be denied on grounds the term "PIILU" has become a generic term referencing a specific cultivar of Clematis live plant offered for sale in this country and the world long prior to Applicant's filing of the application, and the use of that term by the industry has not been abandoned.

9. The requisite fee of \$300.00 per class required to accompany this request is enclosed.

WHEREFORE, Opposer prays that the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted,

Walters Gardens, Inc.

Date: 9/10/107

Barry C. Kane

Miller, Johnson, Snell & Cummiskey, P.L.C.

P.O. Box 306

250 Monroe Ave. N.W.

800 Calder Plaza Building

Grand Rapids, MI 49501-0306

616.831.1770

EXHIBIT 3
Walters Gardens, Inc. v.
Pride of Place Plants, Inc.
Opposition No. 91153755
KANE & CO., PLC

WG0241

Climbing the WALLS

DECORATIVE FOLIAGE,
STUNNING BLOOMS AND
INTERESTING GROWING
PATTERNS MAKE VINES AND
OTHER CLIMBERS POPULAR
CHOICES FOR LANDSCAPES.

Text and photos by
RICK SORENSON

o add a vertical effect to the garden, landscapers have many plants from which to choose. These beauties are so enticing, they have helped many landscapes climb their way to success. Thanks to climbers such as vines, there's a way to decorate existing structures such as buildings or fences, as well as add to decorative support structures such as trellises, pergolas and arches.

For years, vines were known as landscape workhorses. Landscapers and customers alike would often say, "For that hard-to-cover spot, use a vine!" "For that chain link fence, use a vine!" "To cover an unsightly object, use a vine!" Yet, rarely do landscape professionals suggest climbing plants as a main feature or focal point. They should.

Climbers offer year-round interest: They have bold and decorative foliage; beautiful, fragrant flowers; and decorative fruit and seed heads. Many offer brilliant fall color and provide shelter for nesting wildlife. Several climbing plants complement each other and even use each other for support. And thanks to the breeding efforts, collection and distribution of these fabulous plants — many from all over the world — these landscape delights are more available than ever before.

Vines climb in many ways, with leading stems rotating in a circular direction. Some vines have tendrils — coiled or otherwise — which allow the plant to attach itself to trellises, fences or other garden structures. Vines whose tendrils have adhesive discs are better suited for brick or wooden walls. Some climbers have adventitious root systems that twine around a structure, while others have woody stems that twine around each other for support.

Climbers also make great horizontal plants. On recent visits to public gardens in Europe, I saw all kinds of vines growing as groundcovers among mature plants. Using broad-leaved evergreens that flower in early spring to fall is an effective way to create interest in established planting beds.

The plants most often used in most regions of North America tend to be deciduous. However, many evergreen climbers are available. For a striking display of color and texture, landscapers should use combinations of both.

QUEEN OF THE VINES. The most recognized and often-used climbing plant is *Clematis* (virgin's bower); species and cultivars of this genus vary in size, growth rate, foliage and flower. Bloom color also ranges — from purples to reds to pinks to whites. Many small-to large-flowering species and varieties abound. While large-flowering plants have generally been popular, more and more people are requesting small-flowering ones. It's really no wonder why many consider this showy plant "queen of the vines."

Some Clematis species do not cling to structures and must be tied to them to grow vertically; others are natural clingers. While many climb up walls and fences beautifully,

new cultivars can be used in smaller-scale gardens, particularly in patio tubs or containers. These plants are useful in urban gardens or areas with limited space.

Cultivars such as these were introduced a few years ago by Raymond Evison, owner of Guernsey Clematis Inc., located in the Guernsey Islands, south of England. Several of them are noted for their April and early May blooms. C. alpina 'Frankie', for example, features medium-blue, nodding flowers, while C. 'Anna-Louise' offers violet blooms with red-purple bars. The deep pink blooms of C. 'Asao' have dark pink edges. C. 'Pink Champagne' has purplish-pink flowers, while the rose mauve flowers of C. 'Ruby Glow' have red anthers.

Evison also introduced cultivars that bloom in May and June. The full, double flowers of C. 'Arctic Queen' are creamywhite with yellow anthers. C. 'Mrs. N. Thompson' features bluish-purple blooms with a petunia bar. C. 'Multi-Blue' has double, blue flowers with white tips. C. 'Sunset' displays red flowers with purple highlights and yellow anthers.

A recent Estonian introduction is C. 'Piilu' (Piilu'' virgin's bower; photo, bottom), which was bred by plantsman Uno Kivistik. A cross between C. 'Hagley Hybrid' and C. mahrouyi, Piilu is one of the heaviest, prolific bloomers I've seen. Each year, large flowers decorate the plant. Blooms are light purplish-pink with wide, dark-purplish-red bars. Six tepals overlap at the base. The first flowers, which appear in May to June, are double; subsequent blooms are single.

One container and landscape plant that will no doubt be a conversation piece among customers is C. 'Blue Light' (Blue Light'' virgin's bower), which was introduced in the Netherlands by plantsman Frans Van Haastert. A double sport from C. 'Mrs. Cholmondeley', Blue Light is a free-flowering variety that produces masses of large, double, paleblue-violet to pale blue flowers from June to August or September. This plant is available in limited quantities from several US and Canadian nurseries. It will be marketed and distributed to garden centers in spring 2000.

C. × cartmanii 'Avalanche' is a selected seedling from a cross made at Blackthorn Nursery in Hampshire, England, by renowned plantsman Robin White. The pollen parent was C. paniculata, and the seed parent was C. marmoraria, both evergreen species from New Zealand. 'Avalanche' looks beautiful trailing down banks or large rocky areas, and makes a good groundcover. It can also be trained on a wall or fence, or

through deciduous shrubs. Growing 1½ feet to almost 2 feet tall, this cultivar has white flowers that appear on the previous season's wood. This vigorous grower is hardy to 14°.

C. serratifolia 'Kugotia' (Golden Tiara™ virgin's bower; photo, right) is a new outstanding, small, yellow-flowering plant that resembles C. tangutica. Hardy and disease resistant, the prolific flowers of Golden Tiara are thick, golden yellow, and set apart by blackish-purple stamens. The plant flowers from July to the end of October.

In fall, the blooms of Golden Tiara turn to silky, grayish-white seed heads, which add further interest in winter. In midwinter, the plant should be pruned to within 4 feet from the ground to promote fresh growth and more productive flowering.

Golden Tiara is capturing the interest of European gardeners, and can work just as well in American gardens. The breeder is H.J.M. Kuijf from H.J.M. Kuijf and Zonen, Uithoorn, the Netherlands, and the cultivar is currently available from licensed growers, such as Monrovia in Dayton, OR, and Van Belle Nurseries Inc. of Abbotsford, British Columbia, Canada.

In addition to bringing beauty to the landscape, Clematis complements other climbers, including Wisteria (wisteria), Lonicera (honeysuckle) and Hedera (ivy). These climbing plants provide color, fragrance and cut flowers — even year-round, if kept in a conservatory or indoor patio. Bougainvillea, Jasminum (jasmine), Mandevilla, Passiflora (passionflower), Stephanotis and Thunbergia keep the landscape attractive and, when left inside, retain their beauty in winter.

Conversation Pieces. If Clematis is the queen of the vines, Schizophragma hydrangeoides 'Moonlight' ('Moonlight' / Japanese hydrangea) is the king. Darkgreen, broad, oval-shaped leaves await the abundant 8- to 10-inch-wide summer inflorescences. Individual flowers are 1 inch long, oval and pale white-yellow. They appear freely all summer. Foliage turns yellow in autumn, and in winter the plant's young reddish stems are visible. Like the genus, 'Moonlight' is somewhat slow to start but worth waiting for.

Mandevilla is another great vine with fabulous cultivars. The elegant climber M. 'Tropical Dreams', for example, features variegated leaves and clusters of trumpet-shaped, 3-inch-wide, bright-yellow flowers. This plant is an excellent choice for the conservatory or patio. It blooms year-round outdoors in Southern



Above: The hardy and disease-resistant Clematis serratifolia 'Kugotia' flowers prolifically.

Below: Clematis 'Piilu' features large, light purplish-pink flowers with wide, dark-purplish-red bars.



The leaves of Actinidia kolomikta (variegated Chinese gooseberry) are heart-shaped: They are half creamywhite, half green and flushed with dark pink tips. This decorative plant adds pizzazz to the garden.

Akebia quinata (five-leaf akebia) is grown for its foliage and small, reddishpurple flowers, which have a spicy vanilla fragrance. It is evergreen in mild winters.

Ampelopsis brevipedunculata 'Elegans' (variegated porcelain berry) is a mouthful of nomenclature but well worth the effort. The species is quite controversial, as several nursery and landscape professionals say it's invasive. Yet, the cultivar is not invasive. For those who are still wary, this plant can be used in containers.

'Elegans' features young, pink shoots and pink and white leaves. Its green summer flowers are followed by small, but numerous, blue-purple berries. (For more information on 'Elegans', see Field Notes in the Aug. 1, 1998, issue. — Ed.)

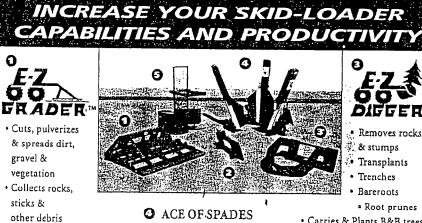
Aristolochia durior (Dutchman's-pipe) features enormous 6-inch-long, 8-inchwide, heart-shaped leaves. Its yellowgreen flowers are inconspicuous, but quite interesting when viewed up close: They're inflated, tubular and bent, re-

Lonicera × 'Mandarin' is a vigorous, deciduous woody vine that spices up the landscape.





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sembling a siphon or small smoker's pipe, thus the common name.

Campsis × tagliabuana 'Kudian' (Indian Summer™ trumpet creeper) is an attractive plant that produces abundant blooms from July to October. When grown in a pot in a greenhouse, the flowers are more an orange color with orange-red throats and red stripes running lengthwise.

Indian Summer does not grow as tall as other $C. \times tagliabuana$ varieties, making it an attractive pot plant for the consumer. Grown against a wall, this climber starts flowering quite well within a few years. It is hardy in zones 4 to 10. Propagation is prohibited.

Recently Indian Summer received the Gold Medal for Best New Plant Introduction at the Plantarium 1998 Exhibition held at Boskoop, Holland. The breeder is H.J.M. Kuijf and Zonen. This outstanding vine is offered in limited quantities by several licensed growers in the US and Canada. This plant will be marketed and distributed to garden centers in spring 2000.

CLIMBERS OFFER YEAR-ROUND

INTEREST: THEY HAVE

BOLD AND DECORATIVE

FOLIAGE; BEAUTIFUL,

FRAGRANT FLOWERS;

AND DECORATIVE FRUIT

AND SEED HEADS.

Hydrangea anomala subsp. petiolaris (climbing hydrangea) is the best known of the climbing hydrangeas. In midsummer, white flowers appear in flat-topped clusters, and the bark effectively peels; with age. This plant attaches by aerial roots produced on the stems.

Jasminum officinale 'Frojas' (Fiona Sunrise™ poet's jessamine) is a new. plant discovered in a batch of seedlings at Fromefield Nurseries in Hampshire, England, by owner David West. Because the plant is derived from a gold-foliaged seedling rather than a sported branch, it probably will not revert to its typical state. It's described in English trade journals as "undoubtedly the best yellow-leaved climber in the market today." Fiona Sunrise flowers from May to September with scented, white flowers. New spring foliage is yellow and tinged with red. Summer leaves are lush and bright yellow, followed in autumn by glorious gold foliage that lasts well

into winter, if mild weather permits, Lonicera × 'Mandarin' (Mandarin' honeysuckle; photo, page 42) is an introduction from the University of British Columbia, Vancouver, Canada. The plant is a cross between Lix brownii 'Droping more Scarlet' and L. tragophylla.

Mandarin is a vigorous, deciduous woody vine that reaches slightly more than 2 feet tall. Young stems are dark purplish-brown, and the glossy leaves are 2 inches long and more than 1 inch wide. Young foliage is dark coppery brown and turns dark green at maturity.

In Vancouver, large flower heads appear in May and June, and continue periodically throughout summer. Individual flowers are tubular — 2 inches to almost 3 inches long — and are dark reddish-orange outside and pale yellow orange inside. Nonfragrant blooms are an intense orange, hence the trademarked name. They complement the foliage and stem colors well.

Mandarin is available from Bailey Nurseries Inc., St. Paul, MN, and from selected growers in Canada. Contact Bruce MacDonald of the University of British Columbia.

Parthenocissus tricuspidata 'Green Spring' ('Green Spring' Boston ivy) has large, heart-shaped, shiny foliage throughout the growing season and well into fall. Autumn color is rich scarlet and crimson.

Wisteria floribunda 'Violacea Plena' ('Violacea Plena' Japanese wisteria) is a vigorous vine that twines clockwise. Its rich-lilac, double flowers droop in slender, 1-foot racemes. Blooms appear in late spring to early summer. This is the only double-flowering W. floribunda cultivar.

W. sinensis (Chinese wisteria) is, without question, the most popular Wisteria species. Twining counterclockwise, it has many interesting cultivars. 'Caroline', for example', has blue to purple flowers, 'Domino' features mauve blooms, and 'Issai' has blue ones. Boasting pink and cream flowers is the aptly named 'Peaches & Cream'. Another appropriately named cultivar is 'Pink Ice', which sports pink blooms. 'Premature' has mauve flowers, while 'Prolific', 'Purple Patches' and 'Snow Showers' have blue, purple and white blooms, respectively.

Because these amazing climbers readily attach themselves to garden structures, they add a nice touch to the landscape. Use them in your garden designs, and they will attach themselves to customers' hearts as well.

Rick Sorenson is the owner of Pride of Place Plants Inc. in Sidney, British Columbia, Canada.

EXHIBIT 4
Walters Gardens, Inc. v.
Pride of Place Plants, Inc.
Opposition No. 91153755
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A nip here and there just the tonic for tired shrubs in need of pruning

By John Van de Water

FOR THE STAR-LEDGER

Late winter is the best time to prune deciduous flowering shrubs. The plants are loaded with nutrients and ready to take off. They respond with new growth and lots more flowers a year later. The bare branches are easy to get at, so we can do a neat job with minimum effort.

Some hardy gardeners can be seen out with pruning shears on milder days in January. But for most of us, the best time for snipping and lopping is late February and early March.

To keep the plants in good health, first concern should be to prune out dead wood and broken branches. Then thin out dense growth to improve appearance and increase bloom. You can stimulate fresh new growth and get more flowers by removing a third of the old branches close to the ground.

Several of our most popular flowering shrubs age poorly. They become straggly with bare lower branches and just a few flowers, often only at the top. They need severe pruning to bring them back into shape.

To get completely fresh new growth, cut them down to the ground now. But note that this treatment is not something you can apply with abandon. Only about a dozen or so of our common flowering shrubs will put up with it. Among these are lilacs, forsythia, tail deutzia, weigela, kolkwitzia (beauty-bush), privet, spirea, rose-of-Sharon (shrub althea), honeysuckle, mockorange, peegee and bigleaf hydrangeas, winged euonymus and beauty-bush.

One drawback is that most of these shrubs bloom in the spring and you lose all flowers by cutting them down now. If you don't want to lose the spring bloom, use the strategy of cutting out one third of the branches three years in a row. It will take a little longer, but you'll have a new shrub in four years,

Note that the beautybush (Buddleia) is a semi-shrub and should be cut down to the ground by spring each year. It will grow back with lots of flowers from late July well into September.

CHANCERY DIVISION Docket No. F-2037-99



PHOTO BY RICHARD RASKA

Forsythia is one bush that can use pruning to stimulate new growth.

Long-blooming clematis

A clematis specialist in Massachusetts is introducing four new longblooming clematis varieties that were developed in Europe. 'Pillu' from Estonia is a 6-foot climber that bears purple-pink flowers with dark red bars during a good part of the summer. First flowers in May and June are double. It blooms again later in the season with single flowers.

The others come from Holland. 'My Angel climbs to 9 feet and bears small flowers, purple outside and yellow inside with creamy edges. It blooms from August through Octo-

Blue Light' produces big 10-inch pale-blue flowers from old wood in the spring and new wood in the fall. It grows to 8 feet. 'Blue Moon' is a bit smaller, with 6-inch lilac flowers in May and June and again in August.

All are offered by Completely Clematis Specialty Nursery, 217 Argilla Road, Ipswich, MA 01938 (978-356-3197).

Hot plants

Ever wonder how some plants: manage to grow through snow and ice? Typical is the skunkcabbage whose flower buds pop up in late February or early March regardless of the weather.

The growth process always liberates some heat, but some plants mostly in the arum family like the skunkcabbage - get warm enough to melt snow and ice.

These plants are able to switch their metabolic chemistry to make more heat. An extreme case is the voodoo lily, a denizen of cold tropical mountains, which can raise its temperature as much as 25 degrees.

Colorful poppies

The Oriental poppies are garden favorites, but they're perennials, grow 3 feet tall, and come only in red. If you want more compact plants with multicolored flowers, try the Iceland poppy, a biennial that's treated like an annual.

Papaver nudicaule is good for bedding out or as a cut flower. Seeds are sown directly out in the garden as early as April, and the plants bloom from summer through fall.

Named varieties are 'Wonderland,' 'Partyfun' and 'Garden Gnome, but all grow about the same and come in mixed colors. Seeds are available from Park Seed (8001 845-3369, Stokes Seed (800) 396-8238 and Thompson & Morgan (800) 274-7333.

To contact us

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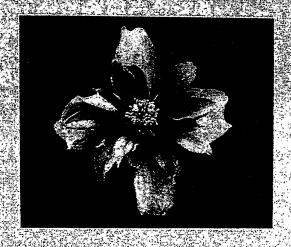
Walters Gardens, Inc. v.
Pride of Place Plants, Inc.
Opposition No. 91153755
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Photographs by the author Consultant — Wim Snoeijer

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Asia previous books I have enjoyed enthusiastic support from a Lassistant, Mrs Janet Hodge, and the dedicated team at my parts Antique Gollectors' Club.

Authority has been given to the book by the availability of the go Wan Snoetjer of the University of Leiden, Eyen with his help, entow have crept into the book; for these the author is entirely responsible

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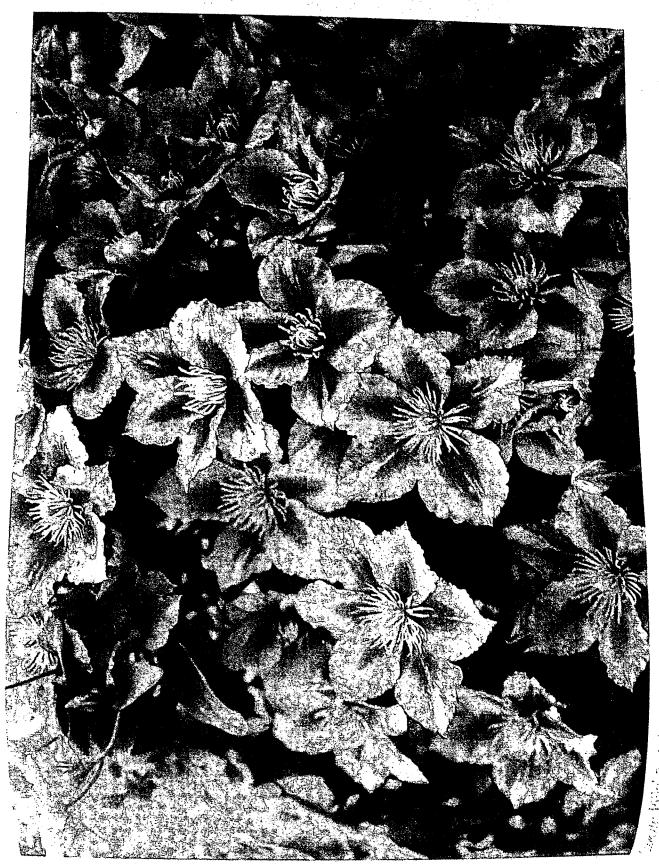
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PINK CLEMATIS

GROUP 1 EVERGREEN	
GROUP II ALPINA	Rost Pagoda Bink Flamingo, Jacqueline du Pré
GROUP III MACROPETALA	Wakham Pink Rosy O'Grady Willy
GROUP IV NONTANA	Mayleen , Vera Peubens : Pictons Variety : thy voconar Continuity
CROUDY ROCKERY	
GROUPVI EARLY LARGE	Nelly Moser', 'Dr.Ruppel', 'Asao', 'Dawn', 'Peveril Pearl
GROUPVII LATE LARGE	Hagley Hybrid - Cointesse de Bouchaud , Pillu . Jöhn Warren
GROUPVIII EERBACEOUS	'Aljomishka' viitegrifolia 'Rosea'
GROUP IX VITICEELA	'Minuet' Margot Koster (Margaret Hunt' Pagoda
GROUP X TEXENSIS	All shades of pink and red
GROUP XI: ORIENTALIS	
GROUP XII. LATE GROUP	

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Clematis D'ilu. Photo by V. Miettinen

would be very high. The same meand C. menume are crossed with The Committee own group or type Species Lecounes Sarticularly New Zealand, are very gie to Baid duce interspecies hybride in the times a wo species are not compatible Resections one combets are different me healisst of the pollination being successful a, slime bucke Added to this, a breeding proname we do not by time flowering period of ra de **capaçõe** de com

fluctions in than a careful breeding programme, you in suide while crosses should be aftempted -but or need to have a clear objective as to what sort of pender war see aiming to produce. For your early and to bless postate with crosses where a good ain can be reliably anticipated if C. albina tyres. I macroperata types, C. montana types or early large flavered types are used and crosses are attempted within these groups, seed should be produced. After seme success with these groups of clematis; you can entark pron more interesting crosses

MARING THE CROSS

Romate a vince sufful cross syou will require only informat teole small tabel caps to record the crosses; a sharp morblade and a small-arrist's painthrush. Having were rougheniale flower (the seed parent) you will outrose it so receive pollen from the male **effic** repals very carefully from the

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Christisty, it remost supertain that none of the potentially valuable seeds are dispersed by the wanting just talk off the plant. To avoid this, while the rieds are still green the sweathead should be convered with muslin bag which allows alt to the seed but protect them from being lost or destroyed uninventionally

REGISTERING A NEW CERNAEIS

The hybridization of clematic care be very rewarding though only the very best of new demacis suitivity should be named and porting the equinmercial marker place; there is goom to rophy a scrigin number of new introductions each rear and these should be something wecial Towever, it you do produce an exciring new clematis that has an ourstanding flower colour or shape erowth formation of flowering habit, it should certain! be named and made available to pardeners

The naming of new clemans is most important if large volumes of plants are expected to be sold around the world. There are two codes that have rules for the naming of plants the international Code of Bosanical Nomenclature, which deals with butanical names, and the International Cade of Nomenclature for Cultivated Plants, which are is son the naming of garden forms or new culcivars. Assimple casy to remember name is best. most probably defined from the appearance of the flower or the whale plant, or the name of a person or place connected with its breeding. Contact the Registrar of the International Clemans Registration Authority (see page (154) to see if your proposed name has been used previously for clemans; if it has it cannot be used again, even in the clemans is no longer in existence. Once the name has been approved by the Registrar it can be entered on the International Clematis Register

If the new clematis cultivar is of exceptional intercal to commercial nuiserymen it can be princised in Europe by Plant Breeders' Rights and in the USA and Canada by Plant Patents. All other countries around the world secognize this protection and offer their own systems of prosection; once a clemans is projected in Europe, in it casier to protectif in other countries the When the plants have been registered and given protection, licensed prowers only can propagate the new clematis with the permission of the person or company owning the Plant Parents of Plant Breeders Richts. Bountes can then be collected from the fixened

Miling sevenine for the breeders

EXHIBIT 6

Walters Gardens, Inc. v. Pride of Place Plants, Inc. Opposition No. 91153755 KANE & CO., PLC THE INTERNATIONAL

Clematis Register & Checklist 2002

Deciduous climber with stems 2-2.5 m. Lvs simple, 3-lobed or ternate; iflets ovate. FL: May-June on previous year's growth, July-Sept on current year's

Published ref. Johnson in I.Cl.S. Newsl. 1: 26 (1984). (Unacceptable name, ICNCP Art. 17.13)

'Piares & Pureizu' See 'Pureness & Please'

'Piarese & Blades' See 'Pureness & Please'

'Picadilly' Misspelling of 'Piccadilly'

'Piccadilly' Early Large-flowered Group Parentage unknown

Fls 10-15 cm across. Sepals 6-8, deep purple-blue, overlapping, pointed. Stamens creamy white or yellow. Deciduous climber with stems 2.5-3.5 m. FL: May-June, Sept.

Published ref. Cunningham Gardens Cat. 1975. (Misspelling: 'Picadilly')

pickingeri A. Gray

Fls male and female on separate plants, 1.5-3 cm across, in many-flowered much-branched terminal panicles to 30 cm long. Sepals 4, white, narrowly oblong, in male fls 0.7-1 cm long, in female fls 0.7-1.4 cm long, margin hairy. Stamens 0.4-0.8 cm; anthers with short appendage. Achenes $5-7 \times 1-1.5$ mm, usually densely hairy; styles to 6 cm. Evergreen climber with stems 5-20 m. Lvs dark green, ternate; Iflets lanceolate to ovate, entire. FL: Dec-Feb (Apr-May in cultivation in N hemisphere). Java, S Celebes east to S New Guinea, NE Australia, New Caledonia

Syns: C. aristata subsp. pickingeri (A. Gray) Kuntze.

'Picton's' See synonymy of 'Picton's Variety'

'Picton's Var.' See synonymy of 'Picton's Variety'

'Picton's Variety' Montana Group Parentage unknown R: P. Picton (c. 1950)

Fls 4-7.5 cm across, fragrant. Sepals 4(-6), satiny deep pink-mauve (Mauve HCC 633/2-3), 2.5-3.5 x 2-2.5 cm, obovate, somewhat concave, margin wavy, outside hairy. Filaments white; anthers pale yellow. Deciduous climber with stems to 4.5(-7) m, ribbed, purple-tinged when young. Lvs bronze, ternate; Iflets lobed or toothed, densely hairy on veins beneath. FL: May-June, with some fls in summer.

Syns: C. montana 'Picton's Variety'; C. montana

'Picton's Var.'; C. montana var. rubens 'Picton's Variety'; C. montana 'Picton's'; C. montana 'Rubens Pictons'.

Published ref. Lloyd 1965: 48, 101. (Unacceptable name, ICNCP Art. 17.15)

'Picturata' Late Large-flowered Group Parentage unknown

R: George Jackman & Son (pre 1877)

Fls 15-16 cm across. Sepals 6(-8), pale mauve to silver-grey, mottled and spotted with bright purple throughout but especially towards the base of the bar, ovate to elliptic, long-pointed, overlapping. Filaments white; anthers chocolate-purple. Lvs pinnate. FL: June-Sept.

Published ref. M & 1 1877: 112.

pierotii Miq.

Fls bell-shaped, c. 2.5 cm across, erect in few-manyflowered inflorescence. Buds broadly obovoid, adpressed-hairy. Sepals 4, white, 0.8-1.3 cm long, a little longer than the stamens, oblong to lanceolate, spreading, pointed, hairy outside. Stamens c. 1 cm long, purplish. Achenes c. 5 x 2 mm, ellipsoid or ovoid, flattened; styles white or yellowish, c. 2 cm. Stems hairless, climbing 3-4 m. Lvs 1-2-ternate or 2pinnate; Iflets ovate to ovate-lanceolate, sharply toothed, beneath soft-hairy especially on veins. FL: Aug-Oct. Japan.

Syns: C. parviloba Gard. & Champ. subsp. pierotii (Miq.) Kuntze.

'Pierrot'

Parentage unknown R: Masako Takeuchi (1993) Fls 12-15 cm across. Sepals brownish purple. Anthers brown: Published ref. Koowaki 1997.

'Pietr Skarga' Misspelling of 'Piotr Skarga'

'Piilu' Early Large-flowered Group 'Hagley Hybrid' x 'Makhrovyi'

R: U. & A. Kivistik (1984), F: U. & A. Kivistik (1987), N: U. & A. Kivistik (1988), REG: EPPIVCD (2000)

Fls single and double, (4-)6-12 cm across, solitary in lf-axils. Sepals of single fls 4-6, mauve-pink, bar broad, purple-red, surface textured and with irregular white markings, 2-5 cm long, broadly elliptic, blunt but apiculate, overlapping, margin frilly. Filaments whitish; anthers yellow. Deciduous climber with stems 1-2 m. Lvs dark green, ternate or rarely pinnate. FL: May-June on previous year's growth (fls often double), Sept-Oct on current year's growth (fls

Published ref. Toovere 1992; The Clematis 1992: 59

EXHIBIT 7

Walters Gardens, Inc. v. Pride of Place Plants, Inc. Opposition No. 91153755 KANE & CO., PLC

An Illustrated Encyclopedia of CIL BMA ATELES

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TO OUR PARENTS

Library of Congress Cataloging in Publication Dark

Toomey, Mary

An illustrated encyclopedia of elemans (Mary Toomey and Evereus Leeds, photograph editor, Charles Chesshire

p. on Includes bibliographical references (p.). ISBN 0-88192-508-X

Clemans I Leeds Everen: IL British Clemans Society

OK 495 R215 T66 2001

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Eronnispiece, Clematis patens in the wild: Photo by J. Lindmark.

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Published in 2001 by

Timber Press, Inc.

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Portland, Oregon 97204

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Prombspiece: *Clemann paten*s in the wild: Phoboby i Lindmark

Convergible © 2001 by Mary, Toomey, Everett Leeds, and Onaries Chesshire. All nights neservedi.

Published in 2001 by Trimber Press, Inc. 133 S.W. Second Avenue, Suite 450 Politishd, Oregon 97204 Designed by Susan Applegate.

Mentition of trademants, proprietary product, or vendor does motomstituite a guarantee on warranty of the product by me Dublisher or authors and does nor imply its approval to the exclusion of other products on vendors. burproduces the best flower colour in a stimy gostion.
Not as rampant as most cultivate of G nantana.
Recommended use Suitable for a pergola, or along a
wall or tence. Zones 87-9.

Clematis pierotii

Origine Japan

Parennige and year. Species, 1867

Habit Slender, strambling or climbing, deciduous erennal

Height S=3 6.m (10-12 ft.) offen less in sullwanon.

Description: The small, rather flat, cream to greamy white flowers, 25-3/5 cm (1-125 in.) across, are borne from lateral shoots in groups of one to three. Each flower is composed of four spear, shaped pointed repais govered with dense short, fine white hairs on the outside. The creamy stamens are somewhat shorter than the repais. Stems are thin anoway, Leaves are divided into three or nine leaflets with arregularly toothed margins and are small, deep green, and some what glossy.

Pruning group: 3

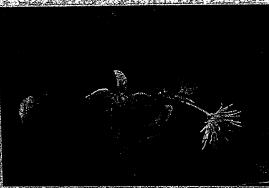
Flowering period: Latersummer to late autumn

Cultivation Tolerates most garden soils with good drainage Best grown infull sun where flowering stems can ripen.

Recommended use: Grow against a warm wall or through medium-sized open shrubs. Suitable for a large container. Zones 4-9

Clematis Pulu'

Origin: Raised by Uno Krystik of Harjumaa; Esto nia: The name means "Little dockling"



description of the second second

Parentinge and year 6. Hagley Hybrid' x 0. Mah.

ffanit Hardy very compact; déciduous elimbe. Height 12-15 m (4-5 ft)

Description: A cultivar of medium vigour Leaves are double and lateronic are single upright open; spreading; and 9-11 cm (3.5-4.7 in) across. Overlappings oval tepals varying number from four to stream are pale plauvish processing distinctly paler towards the scalloped margine with deeper processing are modified energial stationary which are modified spoon-shaped stampodes (sterile stamens), confer the double appearance on the handsome flowers. White filaments and cream anthers constitute the inner fertile stamens. The seedheads are an autractive golden brown.

Pruning group: 1 or 2.

Flowering period: Late spring to early summer and late summer.

Cultivation: Tolerates most garderesoils Bestgrown in full sun

Recommended use: Ideal for container culture Grow over medium-sized, moderately vigorous shrubs which do not require pruning. Suitable for a small trellis or obelisk: Zones 4–9

Clematis Pink Fantasy

Origin: Raised by a Canadian nursery, details not known Introduced to the British Isles by Fisk's Clemans Nursery, Suffolk, England

Parentage and year: Unknown: 197

Habit Hardy, moderately vigorous, compact decid-

Fleight 1.8 2.4 m (6-8 ft)

Description: A floriferous cultivar. The single flowers, 11.5=14cm (4.5=5.5 in.) wide, are made of six to eight scalloped, pointed, shell-pink tepals with deeper pink certifal bars, more prominent rowards the base. The tepals are inclined to twist; giving tise it a rather inegular shaped flower, and as the tepals age, the objuit fades to a pale pink or even whirish pink. Flaments are deeper reddish pink with disky redamless. Pruning group: 2 or 3. A hard pruning (group.)

Flowering period: Early summer to early mile Cultivation: Tolerates most garden solls and a Espect. Best grown in partial shade to prevent per ture fading of flower colours.

Clematis 'Piilu'

Origin: Raised by Uno Kivistik of Harjumaa, Estonia. The name means "little duckling.



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elg

Clematis pieroini. Photo by J. Hudson.

asbe

WG0351

e sition

Parentage and year: C 'Hagley Hybrid' x C. Mah rovyi 1984:

along a

Habit: Hardy, very compact, deciduous climber. Height: 1.2–1.5 m.(4–5 ft.).

Description: A cultivar of medium vigour. Leaves are dark green, early flowers are double, and later ones are single, upright, open, spreading, and 9=11 cm (3.5=4.5 in.) across: Overlapping, oval tepals vary in number from four to six and are pale mauvish pink inside, distinctly paler towards the scalloped margins, with deeper pink central bars. Numerous tepal-like structures, which are modified spoon shaped staminodes (sterile stamens), confer the double appearance on the handsome flowers. White filaments and cream anthers constitute the inner fertile stamens. The seed-like are an attractive golden brown.

Pruning group: 1 or 2,

Flowering period: Late spring to early summer and late summer

Cultivation: Tolerates most garden soils. Best grown in full sun

Recommended use: I deal for container-culture.

Crownizer medition-sized aroder arely rigorous shall not which also not regione parating. Suitable for a study not region of the container.

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EXHIBIT 8

Walters Gardens, Inc. v. Pride of Place Plants, Inc. Opposition No. 91153755 KANE & CO., PLC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AUG 0 4 200:

WALTERS GARDENS, INC.,	,)	OPPOSITION NO. 91153755
	Opposer,	<i>)</i>)	
v)	
PRIDE OF PLACE PLANTS,	INC.,))	
	Applicant.))	
\$;-	Í	١	

RESPONSE TO OPPOSER'S SECOND SET OF DISCOVERY REQUESTS

PROPOUNDING PARTY:

WALTERS GARDENS, INC.

RESPONDING PARTY:

PRIDE OF PLACE PLANTS, INC.

SET NUMBER:

Two

Applicant Pride of Place Plants, Inc. ("POPP" or "Applicant" or "Responding Party"), based on its current knowledge, understanding and belief of the facts and the information available to it on the date on which these responses are made, hereby objects and responds to Opposer Walters Gardens, Inc.'s ("Walters" or "Opposer" or "Propounding Party") Second Set of Requests for Admission, Second Set of Interrogatories, and Second Set of Requests For Production of Documents, as follows:

REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSION 1:

Admit that Exhibit #1, entitled "Clematis Catalogue 1999":

- a. states on p. 3, that *Clematis* 'Piilu' won the Royal Boskoop Horticultural Society's "Award of Recommendation 1997";
- b. states on p. 5, that *Clematis* 'Piilu' was "available from our nursery since 1995";
- c. that pursuant to the definition of "name" set forth on p. 13 of the catalogue (underneath the "headings" heading), that p. 24 of the catalogue identifies the word 'Piilu' as the name of a *Clematis* "cultivar or species";
- d. depicts a flowering plant labeled "Clematis" and 'Piilu' on the last page;

 RESPONSE TO REQUEST FOR ADMISSION 1:
- a. POPP admits that page 3 of the document attached as Exhibit A to Propounding Party's Second Set of Discovery Requests contains the following information:

 "Clematis 'Piilu' Award of Recommendation 1997."
- POPP denies all remaining requests for admissions contained in Request For Admission 1a.
- b. POPP admits that page 5 of the document attached as Exhibit A to Propounding Party's Second Set of Discovery Requests contains the following information:

"Clematis 'Piilu' (Patens Group) d
Hardy climber with stems up to 2m long. Leaves ternate or rarely pinnate, dark green. Flowers up to 12 cm across, the first flowers double, otherwise single, upright, pink striped purple. Flowers from May on old wood into September on young shoots. Raised by Uno Kivistik, Estonia, in 1984, and available from our nursery since 1995. Award of Recommendation in 1997."

POPP denies all remaining requests for admissions contained in Request For Admission 1b.

c. POPP admits that page 13 of the document attached as Exhibit A to Propounding Party's Second Set of Discovery Requests contains the following information:

"name = the name of the cultivar or the species."

POPP further admits that page 24 of the document attached as Exhibit A to Propounding Party's Second Set of Discovery Requests contains the following information:

'Piilu' Patens d Pink striped purple

POPP denies all remaining requests for admissions contained in Request For Admission 1c.

d. POPP admits that the last page of the document attached as Exhibit A to Propounding Party's Second Set of Discovery Requests contains a picture of a plant and that the plant appears to be identified as 'Piilu.' POPP denies all remaining requests for admissions contained in Request For Admission 1d.

REQUEST FOR ADMISSION 2:

Admit that the cultivar of *Clematis* sold and promoted by POPP in association with the PIILU mark was displayed by the Kivistik family during the 1980s and 1990s, including the display for a tour by the International Clematis Society during the 1990s.

RESPONSE TO REQUEST FOR ADMISSION 2:

POPP objects to this request on the grounds that it is vague, ambiguous and unintelligible as to the terms "...displayed..." and "...display..." Furthermore, POPP is without knowledge or sufficient information to enable it to conclude whether the subject matter of the request is accurate or not. Accordingly, POPP denies the Request For Admission.

INTERROGATORIES

GENERAL OBJECTIONS

The following objections are deemed to apply to each of Propounding Party's Interrogatory Requests:

1. Investigation and discovery on behalf of Responding Party are continuing and are not complete. This response is based upon the investigation and discovery conducted to date and is not intended as a complete summary of the facts upon which Responding Party will rely at trial or at other hearings in this action. As discovery and investigation proceed, facts, witnesses and evidence may be discovered which are not set forth in this response but which may be responsive to the Interrogatories set forth below.

Responding Party expressly reserves the right to offer into testimony in this matter further or different information or evidence concerning matters inquired into by the Interrogatories which are subsequently discovered. In addition, facts and evidence now known may be imperfectly understood and, in good faith, may not be included in this response. Responding Party reserves all rights to conduct investigation and discovery with reference to, or offer into testimony in this action, any and all facts, witnesses and evidence, notwithstanding the absence of references to such facts, witnesses and evidence.

2. Responding Party objects to Interrogatory Nos. 1 through 8 to the extent that they call for information or documents protected from discovery or disclosure by any privilege or doctrine, including without limitation, the attorney client privilege, or the work product doctrine. Such information shall not be disclosed in response to Propounding Party's Interrogatories, and any inadvertent disclosure thereof shall not be a waiver of any

privilege with respect to such information or of any work product protection which may attach thereto.

- 3. Responding Party objects to Interrogatory Nos. 1 through 8 to the extent that they purport to impose upon Responding Party obligations beyond those imposed under the Federal Rules of Civil Procedure.
- 4. Responding Party objects to Interrogatory Nos. 1 through 8 to the extent that they request proprietary or trade secret information of third parties, or information that Responding Party is under an obligation to a third party to not disclose.
- 5. Responding Party objects to Interrogatory Nos. 1 through 8 to the extent that they contain sub-parts which should have been propounded as separate and distinct Interrogatories.
- 6. Responding Party further objects to Interrogatory Nos. 1 through 8 on the ground that each and every one is overly burdensome and oppressive to the extent that it seeks facts and information equally available to Applicant Propounding Party.

INTERROGATORY NO. 1:

If your answer to Admission No. 1 is anything other than an unqualified admission, please state the:

- a. complete legal and factual basis for your denial of the request for admission; and
 - b. identity of each witness that you intend to call in support of your denial.

RESPONSE TO INTERROGATORY NO. 1:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that

it is overly broad and unduly burdensome and, therefore, at least in part, seeks information that is irrelevant and not calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, Responding Party states that PIILU is not the name of a Clematis cultivar used in the United States. Responding Party has not yet identified all of the witnesses it intends to use at trial. However, Responding Party contemplates using the testimony of Rick Sorenson of Pride of Place Plants during the testimony period of this proceeding.

INTERROGATORY NO. 2

If your answer to Admission No. 2 is anything other than an unqualified admission, please state the:

- a. complete legal and factual basis for your denial of the request for admission; and
 - b. identity of each witness that you intend to call in support of your denial.

RESPONSE TO INTERROGATORY NO. 2:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it is overly broad and unduly burdensome and, therefore, at least in part, seeks information that is irrelevant and not calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, Responding Party states that PIILU is not the name of a Clematis cultivar used in the United States. Responding Party has not yet identified all of the witnesses it intends to use at trial. However, Responding Party

contemplates using the testimony of Rick Sorenson of Pride of Place Plants during the testimony period of this proceeding.

INTERROGATORY NO. 3

Identify the genus, species, subspecies, varietal, cultivar, common, and commercial names, if any, for the cultivar of *Clematis* sold and promoted in association with the PIILU mark.

RESPONSE TO INTERROGATORY NO. 3:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it is overly broad and unduly burdensome and, therefore, at least in part, seeks information that is irrelevant and not calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, Responding Party states that POPP does not know the answer to this Interrogatory Request. However, POPP further states that PIILU is not the name of a Clematis cultivar used in the United States.

INTERROGATORY NO. 4

Describe how POPP obtained any legal rights in the cultivar of *Clematis* sold and promoted in association with the PIILU mark.

RESPONSE TO INTERROGATORY NO. 4:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it is overly broad and unduly burdensome and, therefore, at least in part, seeks

information that is irrelevant and not calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, Responding Party states that whatever legal rights it has obtained in the cultivar of Clematis POPP sells in association with its PIILU trademark came from the owner by way of agreement.

INTERROGATORY NO. 5

State when POPP first obtained the cultivar of *Clematis* plant that is currently sold and promoted in association with the PIILU mark.

RESPONSE TO INTERROGATORY NO. 5:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it is vague, ambiguous and unintelligible as to the term "...obtained..." Responding Party further objects to this request on the grounds that it is overly broad and unduly burdensome and, therefore, at least in part, seeks information that is irrelevant and not calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 6:

Describe the first sale of the cultivar of *Clematis* sold and promoted in association with the PIILU mark, including (without limitation) when, where, and to whom the sale was made.

RESPONSE TO INTERROGATORY NO. 6:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that

it is overly broad and unduly burdensome and, therefore, at least in part, seeks information that is irrelevant and not calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, Responding Party states that it is not certain who sold the first licensed cultivar of Clematis that Responding Party markets in association with its PIILU trademark.

INTERROGATORY NO. 7:

Identify any known awards, designations, or honors bestowed on the cultivar of *Clematis* sold and promoted in association with the PIILU mark.

RESPONSE TO INTERROGATORY NO. 7:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it is overly broad and unduly burdensome and, therefore, at least in part, seeks information that is irrelevant and not calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, Responding Party states that it does not know the answer to this Interrogatory Request.

INTERROGATORY NO. 8:

Explain the relationship of the term "Kivso" to any plant owned, sold, or licensed by POPP.

RESPONSE TO INTERROGATORY NO. 8:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it is overly broad and unduly burdensome and, therefore, at least in part, seeks information that is irrelevant and not calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, Responding Party states that the term "Kivso" is a combination of the first three letters of the name "Kivistik" and the first two letters of the name "Sorenson."

REQUEST FOR PRODUCTION OF DOCUMENTS

GENERAL OBJECTIONS

The following objections are deemed to apply to each of Propounding Party's Document Requests:

- 1. To the extent that Propounding Party's requests are inconsistent or enlarge upon the Federal Rules of Civil Procedure, Responding Party objects to such requests.

 Responding Party's responses are made without waiving any objections to relevance, privilege or admissibility of any information provided in response to Propounding Party's document requests in any subsequent proceeding or at the hearing of this or any other action. A partial answer to any request which has been objected to in whole or in part is not a waiver of the objection. By asserting various objections, Responding Party does not waive other objections that may become applicable.
- 2. Responding Party objects to Propounding Party's discovery requests on the ground of unreasonable burdensomeness to the extent that they call upon Responding

Party to investigate, collect and disclose information which is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Furthermore, to the extent that responses are provided herein, it is in an effort to expedite discovery in this action and is not an indication or admission by Responding Party of the relevancy, materiality, or admissibility thereof, and all objections to their use or to further production are hereby preserved.

- 3. Responding Party objects to Propounding Party's discovery requests to the extent that they call upon Responding Party to produce documents wherein such documents are not in the possession, custody or control of Responding Party.
- 4. Responding Party objects to Propounding Party's discovery requests to the extent that they call upon Responding Party to produce information immune from discovery because of the attorney-client privilege, attorney work product immunity or because they otherwise call upon Responding Party to disclose the mental impressions, conclusions, opinions, or legal theories of attorneys or other representatives of Responding Party.
- 5. Responding Party objects to any discovery request to the extent that such request refers to or incorporates a previous request to which an objection has been made.
- 6. Responding Party objects to any discovery request to the extent that it is duplicative of a previous request.
- 7. These responses are based upon Responding Party's present knowledge, information and belief. As discovery is ongoing, Responding Party reserves the right to supplement these responses.
- 8. Responding Party objects to producing any document or thing which is subject to a protective order, or agreement restricting disclosure or distribution.

9. Responding Party objects to producing any document or thing to the extent that Propounding Party's requests seek documents and things not relevant to any issue present in this opposition nor are likely to lead to the discovery of admissible evidence.

Request for Production of Document 1:

Produce copies of any documents in your possession, custody or control relating to your responses to the Interrogatories.

Response to Request for Production of Document 1:

Responding Party incorporates by reference General Objection Nos. 1 through 9 as if fully stated here.

Subject to and without waiving its objections and to the extent such documents exist, Responding Party will make available to Propounding Party, at the office of Responding Party's Counsel, nonprivileged and nonconfidential documents that are within Responding Party's possession, custody and control which are relevant to this case and responsive to this request.

Request for Production of Document 2:

Produce copies of all applications or documents relating to the naming, registration, trademark protection, or patenting of the cultivar of *Clematis* sold and promoted in association with the PIILU mark.

Response to Request for Production of Document 2:

Responding Party incorporates by reference General Objection Nos. 1 through 9 as if fully stated here.

Subject to and without waiving its objections and to the extent such documents exist, Responding Party will make available to Propounding Party, at the office of

Responding Party's Counsel, nonprivileged and nonconfidential documents that are within Responding Party's possession, custody and control which are relevant to this case and responsive to this request.

Request for Production of Document 3:

Produce copies of all documents in your possession, custody or control advertising, describing, discussing, publicizing, documenting the sale of, or offering the cultivar of *Clematis* sold and promoted in association with the PIILU mark by POPP, members of the Kivistik family, or representatives of POPP or the Kivistik family.

Response to Request for Production of Document 3.

Responding Party incorporates by reference General Objection Nos. 1 through 9 as if fully stated here.

Subject to and without waiving its objections and to the extent such documents exist, Responding Party will make available to Propounding Party, at the office of Responding Party's Counsel, nonprivileged and nonconfidential documents that are within Responding Party's possession, custody and control which are relevant to this case and responsive to this request.

Respectfully submitted,

PRIDE OF PLACE PLANTS, INC.

Date: <u>#</u>

Gary J. Nelson'

CHRISTIE, PARKER & HALE, LLP

350 West Colorado Boulevard, Ste. 500

Post Office Box 7068

Pasadena, California 91109-7068

(626) 795-9900

VERIFICATION

I. Rick Sorenson, declare that I am the President for Pride of Place Plants, that I have read the foregoing RESPONSE TO OPPOSER'S SECOND SET OF DISCOVERY REQUESTS and that I either know of my own knowledge or am informed and believe that the matters stated therein are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Sidney on July 22, 2003

Hick Sorenson

EBL PAS315322 1-1-07/21/03 2:18 PM

CERTIFICATE OF SERVICE

I certify that on July 27, 2003, the foregoing RESPONSE TO OPPOSER'S SECOND SET OF DISCOVERY REQUESTS is being served by mailing a copy thereof by first-class mail addressed to:

Barry C. Kane MILLER, JOHNSON, SNELL & CUMMISKEY, PLC 250 Monroe Avenue, N.W., Suite 800 P.O. Box 306 Grand Rapids, Michigan 49501-0306 (616) 831-1770

By

Beth B. Lavallee

Christie, Parker & Hale, LLP

P.O. Box 7068

Pasadena, CA 91109-7068

EBL PAS517009.1-*-07/23/03 1:16 PM

EXHIBIT 9

Walters Gardens, Inc. v.
Pride of Place Plants, Inc.
Opposition No. 91153755
KANE & CO., PLC

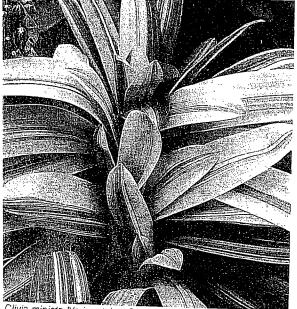
Wayside A Gardens The Complete U7 Garden Catalog

Our fabulous new Rose, 'Barbra Streisand' See page 2.

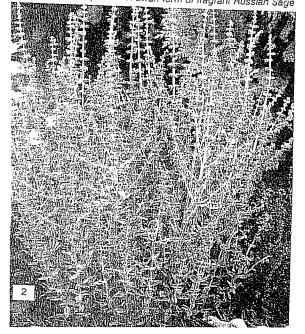
For Spring Planting 2001



emerocallis 'Rosy Returns' - A new color in everblooming Daylilies!



Clivia miniata 'Variegata' — Silver or yellow striping on every leafl Perovskia 'Little Spire' — A dwarf form of fragrant Russian Sage



Welcome to Wayside Gardens

Meet Chris Hansen,

Our New Director of Horticulture

Last fall, after two decades of dedicated service to Wayside Gardens, Horticultural Director John Elsley handed his pruning shears over to Assistant Director, Chris Hansen. We will miss John's keen eye for the new and unusual, as well as his ready wil and voluminous knowledge of plants and bulbs. However, Chris has proven himself equal to the challenge of filling John's mudboots.

Coming to Wayside with degrees in both horticulture and botany from lowa State University, plus experience at the Missouri Botanical Garden and Longwood Gardens. Chris is an enthusiastic seeker of the newest and best cultivars from innovative hybridizers who share Wayside's commitment to horticultural excellence. A breeder of no small talent himself, Chris combines the expertise of a first-rate horticultural background with the genuine dedication of a lifetime gardener whose backyard arboretum is always filled with new treasures. We are confident that you will appreciate both his reverence for classic varieties and his willingness to offer uncommonly-found cultivars of special interest.

If you would like to see a quick list of some of Chris's favorites for spring 2001 planting as well as detailed growth and culture information and gardening tips — visit our website at www.waysidegardens.com

HEMEROCALLIS 'Rosy Returns' PP 9779

The first-ever pink everblooming Daylily, 'Rosy Returns' is the newest creation of master breeder Darrel Apps, whose 'Happy Returns' is the second most sought-after Daylily in the world today! 'Rosy Returns' is simply magnificent, with huge 41/2-inch blooms of bright rosypink with a deeper rose eyezone and a vivid yellow throat. Each stem bears 9 to 12 buds, which begin opening very early (mid-May) and keep coming till hard frost! A dormant diploid adaptable to almost any climate in the contiguous U.S., it forms a neat clump 14 to 18 inches tall and 18 to 20 inches wide — superb for winding around beds, borders, and walkways! 'Rosy Returns' is the latest in the Happy-Ever-Appster' series of dormant everbloomers introduced by New Jersey's Centerton Nursery. Best in full sun and normally-fertile soil. Zones 4-9. Bareroot.

41421 Each \$18.95, Three \$52.00, Six \$99.00, Doz. \$189.00, 24 for \$365.00

CLIVIA miniata 'Variegata' — A Wayside Exclusive Introduction The result of 25 years' breeding from Clivia expert Joe Solomone, this very rare form of Clivia miniata exhibits stunning silver or yellow striation on every 18- to 24-inch-long leaf. Bred for superior vigor, these mature, seedling-raised plants have all bloomed within the past year. Most of the flowers are tangerine-orange, but an occasional rare yellow has crept in — a real prize for the Clivia connoisseur! Culture like other Clivias: a sunny exposure in the house, with moistureretentive soil and a good feeding in late summer and fall. In full bloom, Variegata is 18 inches lall, 18 to 24 inches wide. Zones 9-10. 2-gallon specimens. 40483 Each \$120.00, Two or more \$99.95 each

PEROVSKIA 'Little Spire' - Dwarf Russian Sage

Tail, airy bloomspikes and richly aromatic gray foliage combine to make 'Little Spire' one of the most appealing specimens for the patio, perennial border, or accent planting! Just 24 inches tall and 20 to 24 inches wide, its unusual foliage color and cool lavender-blue blooms add a soothing note to the sunny midsummer garden. The flowers arise over many weeks, creating a vertical swathe of color that combines well with the reds, oranges, and yellows of summer perennials. Superb in hot, humid areas if given good drainage around the crown. Zones 4-9. 3-inch pot. 41010 Each \$7.95, Three \$19.95 Six \$37.95, Doz. \$69.95, 24 for \$135.00



About Our Front Cover

ROSE 'Barbra Streisand' Wekquanele; PPAF. "Hello, Gorgeous!" Ms. Streisand personally grew and selected this extraordinary lavender Hybrid Tea as her namesake. Her criteria were fragrance, color and bloom size, and this cross of R. 'Blue Nile' and 'New Zealand' excels in all 3 areas. The scent is an interesting citrus-influenced Rose, so powerful that only 2 or 3 blooms can perfume an entire room. The color is a highly distinctive, intense lavender which darkens with age and is handsomely complemented by the glossy, moss-green foliage. And the blooms are magnificent — 4 to 41/2 inches across, fully double and with immaculate form — each with a petal count of greater than 35. As if these merits were not enough, Barbra Streisand' is quite free-flowering, producing plenty of

blooms for cutting while remaining colorful as a specimen in the landscape or mixed border. An especially good performer in mild climes, the shrub grows just 3 to 4 feet tall and 2 to 3 feet wide, with disease-resistant foliage. A star is born! Zones 5-9. Bareroot Each \$18.95, Three \$52.00, Six \$99.00, Doz. \$189.00

For Orders and Customer Service,

Phone: 1-800-845-1124 Fax: 1-800-817-1124

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Spring Planting 2001

The Best of Old and New, Selected for Garden Performance and Landscape Beauty

This season we are delighted to bring you one of the most exciting collections of new and classic varieties that we have ever offered. We have literally travelled the world this year, working with renowned breeders and visiting promising new and littleknown propagators in search of the optimal selection of hardy, top-quality cultivars.

To meet the needs of today's American gardeners, we have searched especially diligently for cultivars that demonstrate great hardiness, multi-season appeal, unusual growth habit, and exceptional tolerance of adverse conditions. In these pages you will find many beloved favorites updated with a new look - such as a dwarf habit or a standard-form graft — as well as many entirely new breeding breakthroughs in bloom color, foliage variegation, and even fragrance. We believe that the scope and depth of our selection is second to none, and we are proud to have kept our prices very competitive despite rising production costs.

Please enjoy this catalog, and accept our best wishes for your finest season yet!

ROSE 'Altissimo'

Thriving in a wide range of climates, this spectacular climber displays myriad 5-inch. fragrant, saucer-shaped blooms of Chinese-lacquer red set off by a prominent central golden boss. Single blooms of 5 to 7 petals hold their color and look fresh for a very iong time, emitting a light, sweet aroma that gradually permeates the garden. This vigorous, strong grower blooms on both new and old wood, the first and heaviest flush occuring in early summer, with subsequent intermittent flowerings for several more months. Often growing 8 to 10 feet in a single season, plants are extremely hardy and heat-tolerant. The deep green, leathery foliage is disease-resistant, too! A care-free joy in the garden. Zones 4-9. Bareroot. Very limited supply, so please order early!

45438 Each \$18.95, Three \$52.00, Six \$99.00

STOKESIA laevis 'Colorwheel' PPAF — A Wayside Exclusive Introduction

A veritable kaleidoscope of changing color, this is a Stokesia like no other we have ever seen! The 21/2- to 3-inch flowers open white, then change to lavender the same day, and within several more days have shaded into darker lavender and deep purple with a white center. As these blooms mature, new buds open white, so that 5 or more shades are present at one time on this very floriferous plant! Well-branched and full, with strap-like 10-inch foliage, the plant is 24 inches tall and up to 30 inches wide, blooming very heavily from mid-May well into July. One of the easiest perennials, Stokesia flourishes in full sun and virtually any well-drained soil. Zones 5-9. 3-inch pot.

41048 Each \$8.95, Three \$24.95 Six \$46.95, Doz. \$89.00, 24 for \$165.00

CLEMATIS 'Blue Light'TM

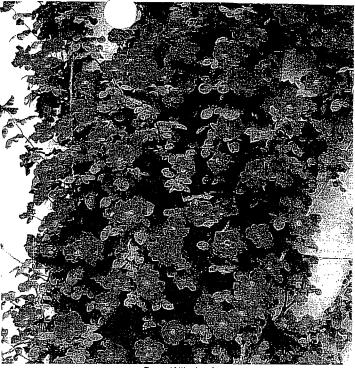
This magnificent sport of the classic C. 'Mrs. Cholmondeley' offers Clematis lovers huge, fully-double flowers on a dwarf plant! Prolific pale blue blooms, some tinged with violet, open 5 to 6 inches across over two long seasons: first from spring through early summer, then again from late summer till fall. Unlike many other large-flowered varieties, however, 'Blue Light' is compact enough for container culture, growing only 6 to 8 feet tall! Foliage is bold and healthy on strong vines. Selected in Holland by Frans Van Heasteert. Plant in full sun to light shade in any well-drained, rich soil. Zones 4-9. Bareroot

41260 Each \$12.95, Three \$34.95, Six \$64.95, Doz. \$119.00

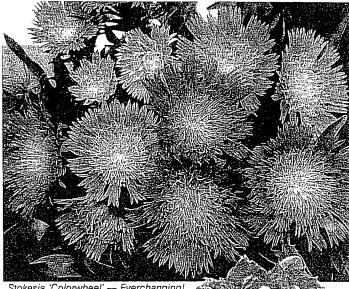
WISTERIA sinensis 'Prolific' - A Standard-form Wisteria A magnificent Dutch selection of the classic Chinese Wisteria, 'Prolific' is known for its bloom power - amazingly strong in late spring, and often repeated less abundantly in late summer. The velvety, fragrant violet-blue blooms open all at once on each long, pendulous 12- to 15-inch raceme, offering an incredible display of color. We have grafted this fine cultivar onto a 4-foot standard that will ultimately reach 5 to 10 feet tall and 12 to 15 feet wide. Site in deep, fertile, well-drained soil with southern exposure; protect from early frosts and cold wind. Zones 5-9, 4- to 5-foot bareroot. 46490 Each \$99.00, Two \$185.00 Three \$259.00

Wisteria sinensis 'Prolific' - Spectacularly floriferous!

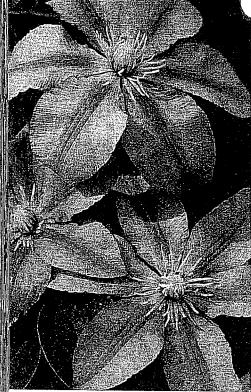




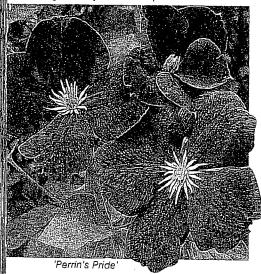




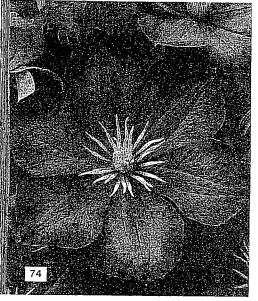
Stokesia 'Colorwheel' — Everchanging. Clematis 'Blue Light'™

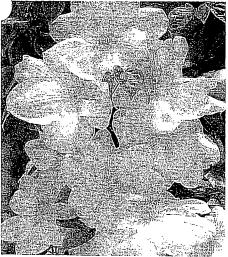


'Sugar Candy' - Best in partial shade

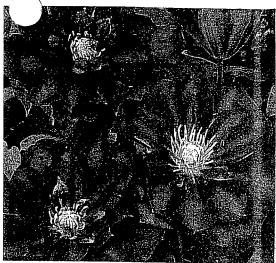


'Ville de Lyon' — Velvety texture





'Marie Boisselot'



'Royalty' — A spectacular double!

Vines & Climbers

WG0017

Large-Flowered Clematis — Colorful Vines All Clematis shipped bareroot except where indicated

41630 'Royalty' — An Original Wayside Introduction. Semi-double Clematis are rare, and rich, dark purple 'Royalty' is one of the finest! Majestic 5- to 6-inch blooms with striking yellow anthers add nobility to any support. Excellent as a container plant, it flowers in spring and again in late summer. (Flowers are often single during the later bloom period.) Raised by English Clematis authority Raymond Evison. Group 1.

44062 'Marie Boisselot' ('Mme Le Coultre'). Up to 6 inches in diameter, the flowers are pale pink on first unfolding, maturing to pure white, set off by yellow stamens. The 8 sepals are broad and overlapping, giving the impression of huge, semi-double flowers beautifully displayed against leathery green toliage. Blooms prolifically in early summer and again in fall. Group II. 43181 'Sugar Candy'™ (PP 9290) — Repeat bloomer for the shade! Huge, candy-striped flowers.

Sugar Candy M (PP 9290) — Repeat bloomer for the shade! Huge, candy-striped flowers, 6 to 7 inches across, are a luscious clear pink with a deeper pink stripe down the middle of each petal, glowing with a central boss of luminous yellow stamens. Blooms are produced in lavish abundance during two big flushes, first in early summer and again fall. Best grown where not exposed to direct sunlight, it makes a superb climber for part shade. Group III.

44272 'Perrin's Pride'. From June to September, this splendid hybrid of C. x jackmanii and 'Ville de Lyon' bears 4- to 7-inch blooms with rounded sepals of deep velvet purple which darken toward the edges. Bronze stamens slowly change to silver. Reaches 8 to 10 feet. Group II.

43129 'Ville de Lyon'. 10- to 12-foot vines proudly bear beautifully rounded carmine flowers that shade to deep crimson around the edges. Lovely velvety texture and contrasting golden stamens. The 5- to 6-inch blooms are borne from June to September. Group I.

43124 C. 'Betty Corning'. The nodding, smokyblue flowers of this vine have a delicacy unusual among the large-flowered Clematis. Flowers are smaller, about 1½ inches across, but are produced in great abundance in mid- to late summer. Plants grow to 6 feet by 10 feet and are quite tolerant of drought and shade. Winner of the prestigious Gold Medal of the Pennsylvania Horticultural Society. Zones 4-9. Group III.

44061 C. montana var. rubens 'Odorata'. Vanilla fragrance distinguishes this Clematis, which lavishly bears pale pink, 2- to 2¹/2-inch flowers in early summer. Grows 20 to 30 feet, or 10 to 15 feet if pruned hard. Zones 6-9. Group I.

MIX AND MATCH All Clematis pages 74-77: Each \$10.75, Three or more \$9.75 each, Six or more \$8.95 each, Doz. or more \$7.95 each, 24 or more \$6.50 each

PLEASE NOTE! Clematis (some species more than others) often are slow to break dormancy each spring. Be patient and don't exhume your plant before it decides to wake from its winter sleep.

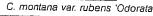
Pruning Groups

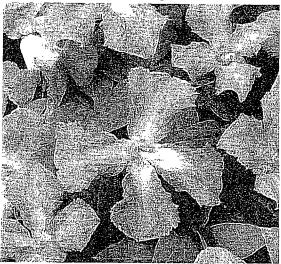
Group I: Prune after flowering if needed

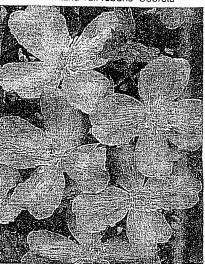
Group II: Every March, cut back the vine 6 or 8 inches to a pair of strong buds.

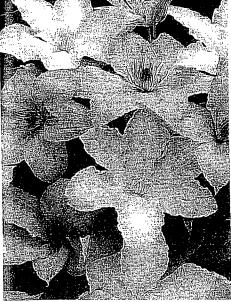
Group III: Every March, cut back to vine to 12 inches from the ground.

Betty Corning









'Hagley Hybrid

43792 'Hagley Hybrid'. This tremendous bloomer really caught our eye at the Clematis Trials at Boskoop, Holland, where it was solidly covered with flowers over a long period in midsummer. Each bloom measures 5 to 6 inches across — a delightful shell-pink with handsome purple anthers. Sepals are pointed and boatshaped when first open. Group III.

41486 'Mrs. N. Thompson'. Remarkably beautiful. 4- to 6-inch violet-purple blooms have a pronounced red stripe down the center of each petal. Striking deep red stamens. Blooms May and June, and again in September. Group II.

43657 'Guernsey Cream' — An Original Wayside Introduction. Brighten dark areas with these 5-inch, glistening moonlight-yellow blossoms. Huge masses appear early, with a second flush later in summer, Ideal in containers. Group II.

41612 'Pink Champagne'. This free-flowering, 6- to 8-foot climber produces striking 6- to 8-inch blooms of vivid pink with cerise edging. Great for vertical spaces in the patio or small garden. Flower color may darken in hot weather. Blooms midsummer on last year's wood. Prune sparingly. Group II.

WG0018

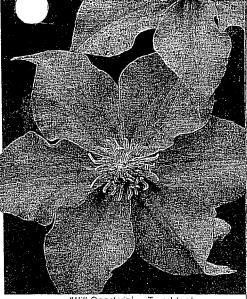


'Mrs. N. Thompson'

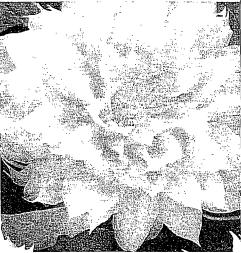
4398 'Will Goodwin'. A true blue Clematis, deeply veined with trilled edges and golden stamens. Blooms are 6 to 8 inches across, abundantly borne June through September on 8- to 12-foot vines. Group II.

41265 'Belle of Woking'. Introduced in 1875, this rare heirloom bears fluffy, fully double, 4-inch pompons that are unlike any other large-flowered hybrid. And their delicate complexion of the palest, coolest pink fading to soft silvery-mauve is unforgettable. Great clouds appear in early summer and seem to glow in morning and at dusk. Group II.

41250 'Piilu'. For a truly distinctive look, this award-winning recent hybrid is unsurpassed! Developed by Estonian hybridizer Uno Kivistik in 1984 as a cross between the classic C. 'Hagley Hybrid' (above left) and C. Mahrouyi, it offers large, 4- to 41/2-inch flowers, first in late spring to early summer on old wood, then again in late summer on young shoots! The blooms are a light violet-pink with wide purple bars, and are often double during the first bloom. Best of all, 'Piilu' flowers the first year! Very hardy and compact, this 6-foot vine is perfect for containers or for winding through shrubs and fences. Zones 4-9. Group II.

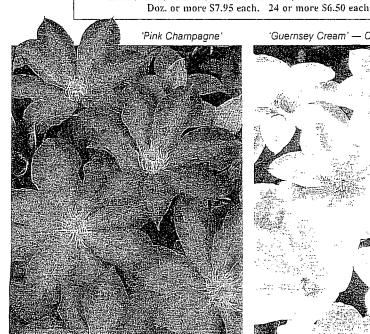


'Will Goodwin' —True blue!



'Belle of Woking"

Piilu' — 1997 winner 🛌 at Boskoop, Holland



'Guernsey Cream' — Closest yet to a true yellow

MIX AND MATCH: All Clematis pages 74, 75, 76, & 77, except C. x durandii, Each \$10.75. Three or more \$9.75 each, Six or more \$8.95 each,





ORDER NOW!

We ship at Proper Planting Time

Your Charge Card Is Not Billed Till Time of Shipment

We ship at proper planting time. When planting season arrives in your garden, the plants you reserved are shipped, first come, first served. Based on decades of experience, Wayside Gardens begins shipping southern regions in February, immediately after nursery stock is dug and properly prepared. We move northward with spring weather, "opening" zones until even the coldest region is "opened" by early May.

Because we ship no plants or bulbs except at the season when they will transplant best in your garden; we suspend most bareroot plant and bulb shipments to Florida, the Gulf-Coast, and Southern California by early May; the deep south by mid-May; and New England, the central and northern U.S. by May 31 We continue shipping many suitable container plants into June to growing areas where successful transplanting is assured. Exact dates vary depending on weather conditions. Garden accessories are shipped year-round.

Winter Plant Dormancy — Many of the plants you receive will arrive in dormant condition (or emerging from dormancy). This is natural to the plant. Please plant according to our directions and allow sufficient time for them to break their dormancy with the advent of spring growing weather.

Blooming Dates in this catalog and Wayside's Culture Booklet are for the New York area, but may vary a month or more, depending on latitude and climate conditions.

Ultimate Sizes and growth rates in this catalog are for "average" conditions, and may vary with different locations and growing conditions. The ultimate size noted for many new shrubs and trees are well considered estimates:

Certain Plants "Cannot Be Shipped To" — In compliance with the regulations of a few states (AZ, CA, OR and WA), we cannot ship certain plants (so noted throughout the catalog) into these particular states. If you wish to ship to one of these states, please check for restriction notice.

Wayside's Reservation Service — Wayside Gardens will reserve your plants and bulbs, in your name, in the strictest sequence of receipt by us of your order or payment. We will protect and care for your reserved stock to the best of our abilities until time for shipment to you. We will not sell your reserved stock to anyone else. Please use your check or credit card to reserve your special Wayside plants as soon as possible:

Please order the standard Multiples Offered (3-of-one-variety etc.) — If your ordered quantity is other than the standard offer, we must increase it to the nearest increment and adjust your bill accordingly.

Mailing List — We do not permit our customers' names to be used for internet or telemarketing (telephone sales) by any company! We occasionally make our customer list of names and addresses available to carefully screened mail order companies whose products may be of interest to you. If you wish, however, not to receive such mailings, please copy your mailing label exactly and mail to:

The Wayside Gardens Co., Mail Preference Service, Hodges, SC 29695-0001

See order form for mail preference form.

Prices Guaranteed Till May 31, 2001

For Fall Planting Needs, please use Wayside's new fall catalog. Customers of last fall and this spring will automatically receive a copy this June. If you are not yet a customer, request your catalog by phone, mail, or internet.



Toll-Free Customer Service

When you need to call, we are ready with complete information and customer service solutions. This is not just lip service—we know of no other company which makes access so easy and helpful: It's our way of doing business . . . and customers tell us it's a good way.



聖子職員は世界の世子であるない。 おいころこうかいこう

For Customer Service or to Place An Order, Phone: 1-800-845-1124

January 2, 2001 to June 1, 2001:

Monday - Friday - 8:00 am to 11:00 pm ET Saturday - 8:30 am to 5:00 pm ET Sunday - 1:00 pm to 5:00 pm ET during March, April; May (except Easter)

June 2, 2001 to December 31, 2001:

Monday - Friday 8:00 am to 6:00 pm ET Saturday 8:30 am to 5:00 pm ET

Fax: 1-800-817-1124

7 days a week, 24 hours a day

Secure Orders Online Anytime: www.waysidegardens.com

The Wayside Gardens Company is closed on New Year's Day, Easter, Independence Day, Thanksgiving and Christmas Day

Write to us at:
Wayside Gardens Customer Service
1 Garden Lane
Hodges, S.C. 29695-0001

To Order: To help us serve you, please complete your order form and have your Visa, Master Card, American Express, or Discover card handy before you call. Your plants will be reserved, but your account will not be billed until your order is shipped at the proper planting time for your area.

For Customer Assistance: Please have your order number available when you call for:

- Questions about your order
- Complaint resolution
- Stock availability
- Special request, questions
- Product information
- · Help with returns
- Staff Horticulturist Available: January 2 - June 30, 2001

Mon. - Fri. 8:00 - 5:00 E.T

Sat. 8:30 - 5:00 E.T.

July 2 - December 31, 2001

Mon. - Fri. Only 8:00 - 5:00 E.T

WAYSIDE GARDENS GUARANTEE

You must be satisfied with Wayside's plants, bulbs and garden supplies. If anything proves other than satisfactory, notify us within a year, and we will replace at proper planting time. (if available), give full credit, or refund the purchase price; as you prefer Guarantee only covers growing stocks if planted in shardiness zones recommended by our catalog.

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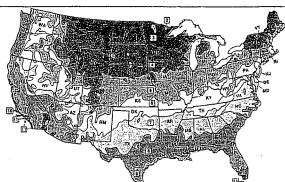
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-40° TO -30° ZONE 4 -30° TO -20° ZONE 5 -20° TO -10° ZONE 6 -10° TO 0° ZONE 7 0° TO 10° ZONE B 10° TO 20° ZONE 9 20° TO 30' ZONE 10 30° TO 40° ZONE 11 ABOVE 40°

-50° TO -40° F

ZONE 2

Rhamnus Plant Hardiness Zones

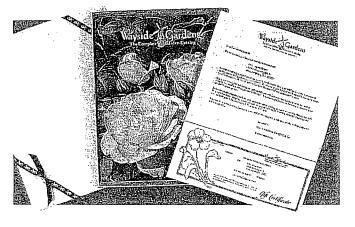
This hardiness map was developed by the Agricultural Research Service of the U.S. Dept. of Agriculture. The zones 1-11 are based on the average annual minimum temperature for each zone. In the zone information given for each plant, the smaller number indicates the northern-most zone it can be counted on to survive the winter, and the higher number, the most southerly area it will perform consistently. Many factors such as altitude, degree of exposure to wind, proximity to bodies of water, snow cover, soil types and the like can create variations of as much as two zones in winter hardiness, while cool nights, shade and amount of water received can extend the southern limits.

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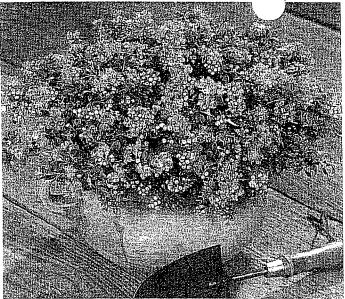
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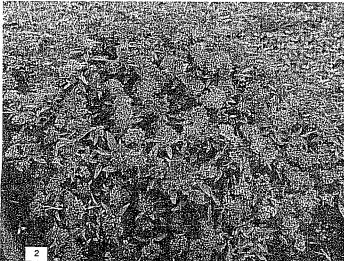
Lagerstroemia x 'Chickasaw' — A dwarf disease-resistant Crape Myrtle!

Lonicera x brownii 'Mandarin

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Spiraea japonica 'Neon Flash' -- Vibrant blooms over a long season



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LAGERSTROEMIA x 'Chickasaw' — n と い! At last, a true dwarf Crape Myrtle! The result of more than 30 years' breeding by the U.S. National Arboretum, this floriferous, mildew-tolerant dwarf is the first in a planned series of miniature hybrids of L. indica x L. fauriei. Reaching only 20 inches high and 26

inches wide after 7 years' container growth, 'Chickasaw' boasts reddish new foliage that turns dark green, topped in midsummer by vivid clusters of shiny dark red buds that open into lavender blossoms. This long-season appeal adds to its desirability as a patio plant, a summer-flowering perennial south of zone 5, and an annual or bedding plant in the north. A choice specimen for

the rock garden or "instant" bonsai, too! Plant in full sun in any welldrained soil with normal fertility. Zones 6-9. One-quart container

47160 Each \$14.75, Three \$40.75, Six \$77.00, Doz. \$148.00

LONICERA x brownii 'Mandarin' - new!

One of the hardiest Honeysuckles ever, 'Mandarin' is also among the most floriferous, with lovely, large (21/2- to 23/4-inch) blooms of bright orange-red against a contrasting pale yellow throat. This hybrid of L. trago-

phylla 'Dropmore Scarlet' was developed at the University of British Columbia by Dr. Wilf Nicholls, and is an especially heavy bloomer in early summer, though the color continues intermittently well into fall. Vigorously growing 6 or 7 feet a year, the vine quickly reaches maturity at about 20 feet tall and 8 to 10 feet wide - perfect for the trellis, fence, pergola, or tree trunks. Non-fruiting vines bear great clusters of fragrance-free flowers, irresistible to hummingbirds, and new spring growth emerges a lovely coppery color before turning dark green, adding to its long-season beauty. Plant in full sun to light shade in well-drained soil with good moisture; a cool root run is required. Zones 3-9. One-gallon container.

49205 Each \$19.75, Three \$54.00, Six \$104.00, Doz. \$198.00

SPIRAEA japonica 'Neon Flash'

Brilliant blooms bedazzle over a long season on this ultra-easy flowering shrub! A great improvement on the well-known S. 'Anthony Waterer,' 'Neon Flash' offers profuse, rich, vivid red flowers in early- to midsummer, with no shoot reversion. New foliage is a deep purple-red before turning dark green, a perfect backdrop to the intense bloom color. The shrub boasts a neat, dense, round habit just 3 feet tall and 3 to 4 feet wide - ideal for edging and mass planting. Originally discovered growing wild in Japan, 'Neon Flash' is tolerant of any well-drained garden soil and absolutely fuss-free! Space 4 to 5 feet apart in full sun in northern regions, light shade further south. Zones 4-8. One-gallon container. 46527 Each S16.75, Three \$46.50, Six \$88.00, Doz. \$167.00

About Our Front Cover



ROSE 'François Rabelais'TM (Meinusian) PPAF A Wayside Exclusive Introduction

This sumptuous Romantica® Rose from the Meilland family combines the Floribunda shrub habit with exquisite old-fashioned flower form. Clusters of velvety, tightly-packed vermillion-red blooms, 31/2 to 4 inches across and subtly redolent of cedar, open from plump vermillion buds. Blooms repeat all season on compact, vigorous 3-foot shrubs with glossy, highly disease-resistant olivegreen foliage. Perfectly suited to small gardens and ideal as a low hedge, its blooms are incomparable in the vase. No wonder our Director of Horticulture, John Elsley, declares 'François Rabelais' " "one of my all-time favorite Roses!" Zones 5-9. Bareroot.

45146 Each \$16.75, Three \$46.50, Six \$88.00, Doz. \$167.00

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Spring Planting 2000

Best Served Are Those Who Order Early!

In nearly all parts of the country, the cool, moist weather of early spring is ideal for planting hardy garden plants, roses, and bulbs. All planting stock responds best when planted in soil that is cool, when days are mild and nights chilly. To help you take advantage of this natural cycle, we will reserve your early order and ship at proper planting time for your area. Your charge card will be billed only when your stock is shipped.

With your garden resting in winter dormancy, now is the ideal time to plan your spring planting. From 84 years of experience in the nursery business, we know that nature's whims control our activities. Our products are not manufactured but grown; so, in the case of "short crops," early orders receive first consideration. Because we have much preliminary work to do before the busy spring planting season, you can help us give you the best possible service by ordering early.

ROSE 'Altissimo'

Thriving in a wide range of climates, this spectacular climber displays myriad 5-inch, fragrant, saucer-shaped blooms of a Chinese-lacquer red set off by a prominent central golden boss. Single blooms of 5 to 7 petals hold their color and look fresh for a very long time, emitting a light, sweet aroma that gradually permeates the garden. This vigorous, strong grower blooms on both new and old wood, the first and heaviest flush occuring in early summer, with subsequent intermittent flowerings for several more months. Often growing 8 to 10 feet in a single season, plants are extremely hardy and heat-tolerant. The deep green, leathery foliage is disease-resistant, too! A care-free joy in the garden, 'Altissimo' deserves a place wherever vibrant color and sweet scent are welcome. Zones 4-9. Bareroot, Very limited supply, so please order early! 45438 Each S18.75, Three S52.00, Six S99.00

CLEMATIS 'Blue Light'TM - nEW!

A Wayside Mail-Order Exclusive!

This magnificent sport of the classic C. 'Mrs. Cholmondeley' offers Clematis lovers the best of both worlds: huge, fully-double flowers on a dwarf plant! Prolific pale blue blooms, some tinged with violet, open 5 to 6 inches across for two long seasons: first from spring through early summer, then again from late summer till fall. Unlike many other large-flowered varieties, however. 'Blue Light' is compact enough for container culture, growing only 6 to 8 feet tall! Foliage is bold, tough, and healthy on this strong vine, which was selected in Holland by Frans Van Heasteert. Plant in full sun to light shade in any well-drained, moisture-retentive soil with good nutrient levels. Zones 4-9. Bareroot. 41260 Each \$12.75, Three \$35.50, Six \$67.00, Doz. \$128.00

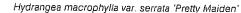
ECHINACEA 'Kim's Knee High' PPAF - 12 E UJ!

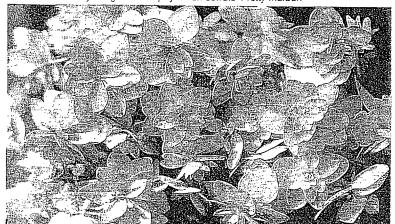
Celebrate one of North America's finest native species with this free-blooming, compact, uniquely colored selection from North Carolina native plant authority Kim Hawks. This is the first selected dwarf Coneflower, and the standard for all future selections. Masses of butterflies will appear when these lovely rosy-pink flowers, with rigidly reflexed petals, open all over bushy 18- to 24-inch plants. Try 'Kim's Knee High' in the front of the herbaceous or mixed border, where its smaller stature (il spreads just 18 to 20 inches wide) and striking mid- to late summer blossoms can be admired. With tough, leathery foliage, this plant is highly drought- and heat-tolerant and thrives in any well-drained soil — even the poor, dry patches that plague gardeners! Zones 3-9, 3-inch pot.

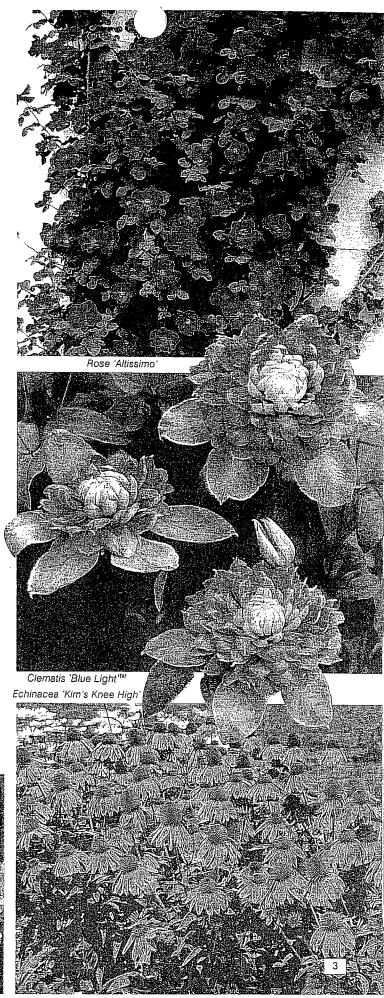
41089 Each \$7.75, Three \$21.25, Six \$39.75, Doz. \$78.00, 24 for \$148.00

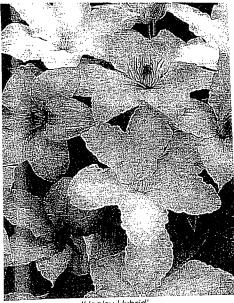
HYDRANGEA macrophylla var. serrata 'Pretty Maiden' — 12 & Ut! A Wayside Exclusive Mail Order Introduction. An exciting new look in lacecaps! The two-tiered effect of lacecap Hydrangea blossoms — created by an outer ray of sterille florets working a dense central cluster of fertile florets — is terrilically enhanced in 'Pretty Maiden' by gorgeous fully-double florets on the outer ray! Each floret boasts a dense, many-layered pinwheel of about 20 petals. Delicate pink new flowers mature to a whitish shell-pink during their long 4-week bloom time, — a lovely antique look against the leathery midgreen foliage. Stately and decidely feminine, it is a striking specimen, container subject, or standout in the border. Growing just 3 to 4 feet tall and 4 to 5 feet wide, 'Pretty Maiden' thrives in a sunny spot in any well-drained, moisture-retentive soil. (Avoid direct afternoon sun, however.) It responds well to shaping, but because flower stems are produced on the previous season's growth, be sure to prune after flowering. Zones 6-9. One-gallon container.

46138 Each S21.75, Three S60.00, Six S113.00, Doz. S216.00









'Hagley Hybrid

43127 'Hagley Hybrid'. This tremendous bloomer really caught our eye at the Clematis Trials at Boskoop, Holland, where it was solidly covered with flowers over a long period in midsummer. Each bloom measures 5 to 6 inches across — a delightful shell pink with handsome purple anthers. Sepals are pointed and boat-shaped when first open, Group III.

43126 'Mrs. N. Thompson'. Remarkably beautiful, 4 to 6 inch violet-purple blooms have a pronounced red stripe down the center of each petal. Striking deep red stamens. Blooms May and June, and again in September, Group II.

441.65 'Belle of Woking', Introduced in 1875, this rare heirloom bears fluffy, fully double, 4-inch pompons that are unlike any other large-flowered hybrid. And their delicate complexion of the palest, coolest pink fading to soft silvery-mauve is unforgettable. Great clouds appear in early summer and seem to glow in morning and at dusk. Group II.

43903 'Will Goodwin'. A true blue Clematis. deeply veined with frilled edges and golden stamens. Blossom are 6 to 8 inches across, abundantly borne June through September on 8 to 12 foot vines. Group II.

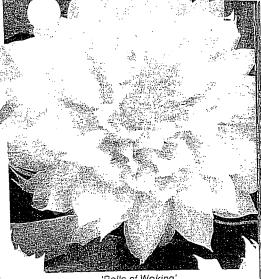
> Each \$10.75, Three or more \$9.75 each, Six or more \$8.95 each. Doz. or more \$7.95 each, 24 or more \$6.45 each



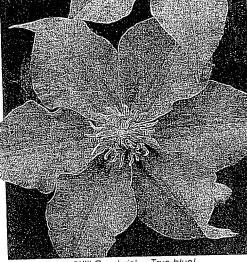
'Pink Champagne'. This free-flowering, 6-41612 to B-foot climber produces striking 6- to B-inch blooms of vivid pink with cerise edging. Great for vertical spaces in a patio or small garden. Flower color may darken in hot weather. Blooms midsummer on last year's wood. Prune sparingly. Group II.

'Guernsey Cream' - An Original 43583 Wayside Introduction. Brighten dark areas with these 5-inch, glistening moonlight-yellow blossoms. Huge masses appear early, with a second flush later in summer. Ideal in containers. Group II.

41250 'Pillu' - neur' For a truly distinctive look, this award-winning new hybrid is unsurpassed! Developed by Estonian hybridizer Uno Kivistik in 1984 as a cross between the classic C. 'Hagley Hybrid' (above left) and C. Mahrouyi, it offers large, 4- to 41/2-inch flowers, first in late spring to early summer on old wood, then again in late summer on young shoots! The blooms are a light violet-pink with wide purple bars, and are often double during the first bloom. Best of all, 'Piilu' flowers the first year! Very hardy and compact, this 6-foot vine is perfect for containers or for winding through shrubs and lences. Zones 4-9. Group II.



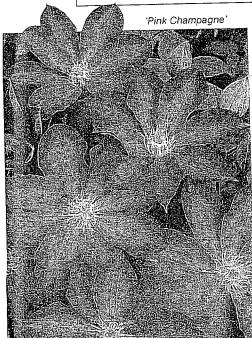
'Belle of Woking'

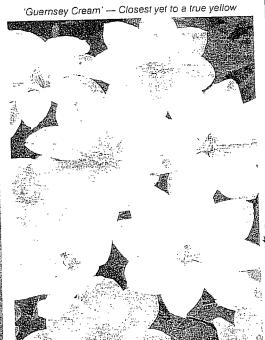


Will Goodwin' —True blue!

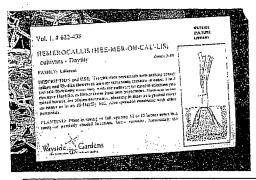
MIX AND MATCH: All Clematis pages 74, 75, 76, & 77, except C. x durandii.

at Boskoop, Holland 'Piilu' — 1997 winner 🎄









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Blooming Dates in this catalog and on Wayside Culture Cards are for the New York area, but may vary a month or more, depending on latitude and climate conditions.

Ultimate Sizes and growth rates in this catalog are for "average" conditions, and may vary with different locations and growing conditions. The ultimate size noted for many new shrubs and trees are well considered esti-

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Wayside's Complete L dex

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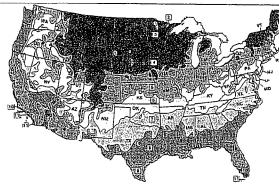
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Cranberry140

ZONE 3 -40° TO -30° ZONE 4 -30° TO -20° ZONE 5 -20° TO -10° ZONE 6 -10° TO 0° ZONE 7 0° TO 10° ZONE B 10° TO 20° ZONE 9 20° TO 30° ZONE 10 30° TO 40° ZONE 11 ABOVE 40°

-50° TO -40° F

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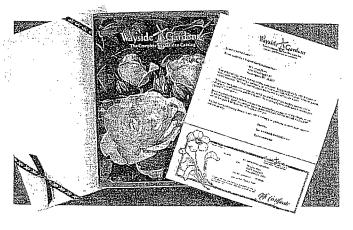
Plant Hardiness Zones

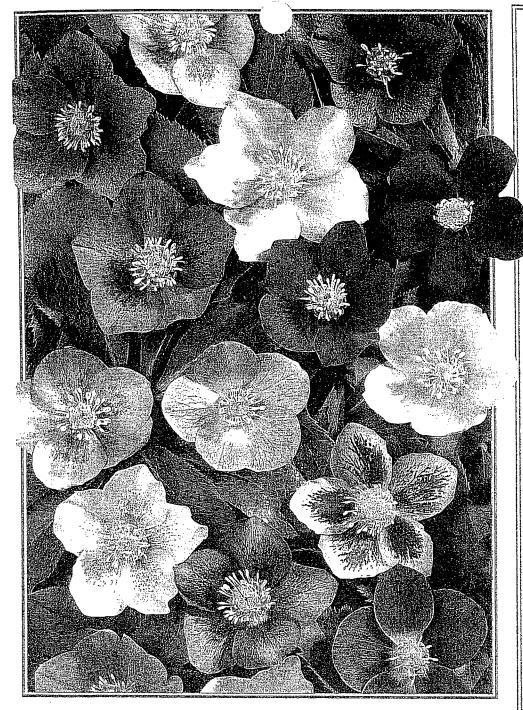
This hardiness map was developed by the Agricultural Research Service of the U.S. Dept. of Agriculture. The zones 1-11 are based on the average annual minimum temperature for each zone. In the zone information given for each plant, the smaller number indicates the northern-most zone it can be counted on to survive the winter, and the higher number, the most southerly area it will perform consistently. Many factors such as altitude, degree of exposure to wind, proximity to bodies of water, snow cover, soil types and the like can create variations of as much as two zones in winter hardiness, while cool nights, shade and amount of water received can extend the southern limits.

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Royal Heritage Hellebores –

Our Premiere Introduction of the Decade!

Destined to Become the #1 Perennial for the American Shade Garden

- · Up to five months of bloom
- Very long-lived, even with scant attention
- · Palm-like evergreen foliage
- The culmination of 50 years of breeding
- · Tough as nails
- Widely adaptable from north to south
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After fifty years of dedicated English breeding and ten years of collection and ongoing selection by our Director of Horticulture, John Elsley, we excitedly offer our patrons the very finest perennial introduction of the decade. Royal Heritage Hellebores are destined to supplant even Hostas as the premiere carefree perennial for shade (and partial sun).

Uniquely superior for its wide range of sumptuous colors (purple, red, near-black, white, green, pink and even yellow) captured by 2-inch flowers with overlapping petals. In our garden the strain produces flowers for nearly 5 months, from winter through spring. Cut and floated, they make an excellent centerpiece, lasting up to two weeks.

A gardener's "dream plant" — very permanent, very low-maintenance, very disease-free, very pest-free! Easy to establish from our vigorous container stock. Over the years each will develop into sturdy, long-lived clumps 18 to 24 inches high and 2 to 3 feet across. Totally tolerant of heat and humidity, and even periods of drought, if given well-drained, moisture-retentive soil. Can even thrive in clay! Zones 4-9.

44368 31/2-inch pot Each \$14.25, Three \$39.75, Six \$75.00, Doz. \$143.00, 24 for \$273.00

44523 One-gallon container Each \$29.00, Three \$80.00, Six \$152.00, Doz. \$289.00, 24 for \$565.00

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Rose 'Paul Bocuse' A single stem creates a bouquet! See page 2.

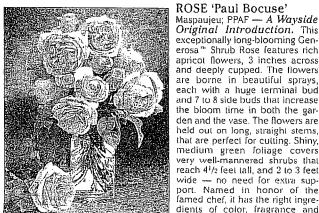
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Canna 'Australia

About Our Front Court



exceptionally long-blooming Generosa" Shrub Rose features rich apricot flowers, 3 inches across and deeply cupped. The flowers are borne in beautiful sprays, each with a huge terminal bud and 7 to 8 side buds that increase the bloom time in both the garden and the vase. The flowers are held out on long, straight stems, that are perfect for cutting. Shiny, medium green foliage covers very well-mannered shrubs that reach 41/2 feet tall, and 2 to 3 feet - no need for extra sup-

port. Named in honor of the

ROSE 'Paul Bocuse'

famed chef, it has the right ingre-dients of color, fragrance and form. All three elements blend together in a creation worthy of the French culinary legend. Zones 5-10. 45545 Each \$19.95, Save 12%-Two \$34.95, Three \$49.95 Six \$95.00

Welcome to Wayside Gardens Spring Planting 2002

The Best of Old and New, Selected for Garden Performance and Landscape Beauty

Dear Wayside Gardener,

It has been another wonderful year here at Wayside Gardens. I was fortunate to be able to visit the very best hybridizers and nurserymen in both the U.S. and abroad. The wealth of new and improved plant malerial is astounding. New plants have always been one of the primary focuses at Wayside Gardens and I'm extremely excited to be able to offer you over 150 plants which are new to this catalog. A number of these have taken 3 to 5 years to build up sufficient quantities. These choice rar-

ities include the hardy, fragrant orchid Calanthe, the doubled-flowering Magnolia sieboldii 'Colossus', the best red Canna — C. 'Australia', and the extraordinary new variegated Kousa Dogwood 'Limon Ripple'. Many of these new varieties are exclusive to Wayside Cardens. But whether they are are new selections or older, proven performers, all Wayside plants are uncommonly beautiful and represent the best in perennials, roses, flowering shrubs and trees! Many of the items are in limited supply and I would hate to disappoint you, so place your order early!

Thank you for selecting Wayside Gardens as your premiere choice for exciting new plants and best wishes for a happy, healthy and productive growing season!

P.S. Be sure to order early for best selection!

Chris Hansen, Director of Horticulture

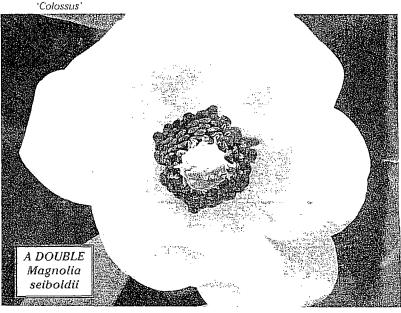
CANNA 'Australia' — The Darkest Leaved Canna Ever! (Syn. Canna 'Feurzauber'.) One of the most fantastic dark foliaged plants we've found! Deep burgundy-black foliage, that maintains its dark glow even in the hottest months of summer, is topped with a display of large red flowers. After three years of work to build up supply, this rare Canna is now available to Wayside customers. The dark stems and satin foliage form clumps, 4 to 5 feet tall and 12 to 18 inches wide, that contrast with the vivid blooms appearing from early summer into early fall. Tolerant of heat and humidity, 'Australia' is a fantastic specimen or accent plant that adapts well to patio containers and perennial borders where it quickly becomes the focal point. Attractive in combination with Canna 'Bengal Tiger' (page 107) as shown in the photograph. Plant in full sun and moist soil. Zones 7-10. Bulb.

7231 Each \$19.95, Save 12%-Two \$34.95, Three \$49.95, Six \$89.00, Doz. \$169.00

MAGNOLIA sieboldii 'Colossus' — Huge Double Flowers! A double flowering form of M. sieboldii with superior heat tolerance! The intensely fragrant flowers of the Japanese Oyama Magnolia take on a much larger size and fullness in 'Colossus' because it is a hexaploid, which means it contains five times the chromosomes of the species. Pendant, cup-shaped blooms, the majority 3 to 4 inches across with some up to 5 inches, are nearly twice the size of those produced by M. sieboldii and can have up to 18 petals. This rare hybrid produces a range of both double and semi-double, fragrant blooms from late spring and into early summer. Trees reach 15 to 20 feet tall and 12 to 15 feet wide and have the advantage of blooming at a young age. Zones 5-9. One-gallon container.

47029 Each \$150.00 Limit One Per Customer, Please

Magnolia sieboldii



CALANTHE Kozu Hybrids - Inte

Fragrant Hardy Orchid!

The only Calanthe to produce fragrant flowers hard-to-find orchids come in an unparalleled variety of colors. Clove-scented, 8- to 10-inch flower spikes are borne in mid to late

spring in shades of white, pink, red, purple, brown, orange and bicolors. Hybridized in Japan, Kozu Hybrids are nursery propagated, vigorous bloomers, and they are finally available in very limited quantities in the U.S. Pleated, evergreen foliage matures in the fall and remains for most of the winter months. Plants, reaching 12 inches tall and wide, are ideal in woodland or perennial bor-

ders, or used as specimens or accent plantings. Grow in partial shade. Zones 7-9. One-quart pot. 40342 Each \$54.95, Save 10%-Two \$99.00, Three \$139.00

CLEMATIS florida sieboldii (C. f. bicolor)

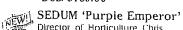
One of the choicest and most sought-after of all Clematis, with striking and spectacular flowers of intriguing charm. Against a background of creamy white sepals is displayed a large, lustruous central boss of purple petal-like stamens — the effect at first glance is that of a 3- to 4-inch passion flower. Long cultivated in Japan, it was introduced to England in 1836. Succeeding best with some natural winter protection, in colder climates it is a splendid container plant grown outside after danger of frost, then brought into a frost-free location through winter. Best in humus-rich soil and a sheltered woodland setting. A premium variety by any standard! Hardy in warmer parts of Zones 5-9.

44033 Each \$12.95, Save //%-Two \$22.95, Three \$32.95, Six \$59.95

LILY 'Silk Road' - The Most Fragrant Lily Ever!

The most stunning hybrid Lily to date and the most fragrant too! 'Silk Road' is the work of Judith Freeman, who has more than 30 years of Lily breeding experience. A hybrid breakthrough, this introduction is one of the "Orienpets" — an interspecific cross combining the best attributes of the Oriental and Trumpet Lilies. The work is careful and demanding — 400 crosses may only produce 5 seeds. 'Silk Road' bears bright white flowers, 8 to 10 inches across, with deep crimson-rose throats that are carried on an enormous inflorescence up to 2 feet across with many secondary buds to extend blooming time. The strong stems reach 6 feet tall and don't topple over. Available in extremely limited quantities, Zones 4-9,

Each \$19.95, Save 12%-Two \$34.95, Three \$49.95, Six \$89.00, Doz. \$169.00



Director of Horticulture Chris Hansen calls 'Purple Emperor' the best dark-foliaged Sedum he's seen and, with its near-black leaves and rich red-purple flowers, is destined to be an attention-getter. The bushy plants, reaching 18 inches tall and sprending 12 to 18 inches, grow in tight, eve-catching clumps of deep purple foliage. Near-black stems hold up 3-inch terminal flower heads of deep red-pur-ple in mid to late summer. The plants withstand heat and humidity and the flowers hold their color well into fall. Introduced by the former Washfield Nursery of England, 'Purple Emperor' traces its lineage to the Sussex garden of co-owner Graham Gough's parents. The dark Sedum is the perfect centerpiece in a summer perennial bed. For best results, grow 'Purple Emperor' in full sun and dry soil. Zones 3-7, Bareroot.

40554 Each \$9.95, Save 9%-Three \$26.95. Six \$44.95, Doz. \$85.00



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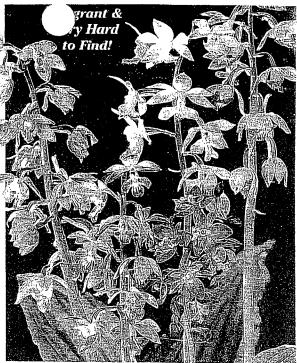
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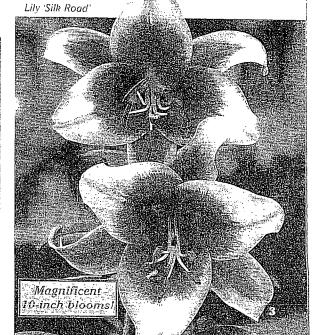
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Calanthe Kozu Hybrids – Hardy Terrestrial Orchids



Clematis florida sieboldii



A) 'Marmalade Skies'" Meimonblan; PPAF. 2001 AA iner (co-winner with 'Glowing Peace'). Simply one of the most floriferous Roses ever, filli. rv vase you own with 21/2- to 3 inch blooms of brilliant tangerine-orange that last an extraordinary length of time! A "blooming machine" (how unromantic!), this compact, rounded 3-foot by 3-foot plant just doesn't know how to quit producing clusters of 5 to 8 blooms — lightly fragrant and boasting a petal count of 22 — from early summer through late fall! The foliage is a satiny olive-green. Tolerant of light shade and equally at home in the shrub border, perennial garden, hedge, or container, this is an extraordinary performer whose beauty you will value for many years to come!

45851 Each \$14.95, Save 9%-Two \$26.95, Three \$36.95, Six \$64.95

B) 'Lavaglut' 1979. An intriguing Rose with an interesting name, 'Lavaglut' displays clusters of deep red blooms, almost black in bud, so prolific that one cluster can be cut for an instant bouquet! Each stem of this Floridbunda has 30 to 50 individual 11/2-inch blooms. The dark flowers, each with 25 to 30 intense red petals, are long-lived in the garden or vase. Introduced by the Kordes family, 'Lavaglut' — German for lava glow — is a proven garden performer. The glossy, dark green foliage is disease- and pest-resistant and blankets plants reaching 5 feet tall

45726 Each \$18.95, Save 13%-Two \$32.95, Three \$44.95, Six \$79.00

C) 'Brilliant Pink Iceberg' cv. Probril; PPAF. Evoking the pink-and-cream decor beloved by the Victorians, this sport of the renowned Floribunda 'Iceberg' offers huge, plentiful clusters of blooms bearing a delightful honey scent! Each 21/2-inch bloom sports 18 to 24 petals of deep cerise-pink against a cream background, the color intensifying in cooler weather. Every bit as reliable as its parent, this rounded shrub reaches 4 to 5 feet tall and wide, with a strong growth habit and glossy fresh-green foliage. Just right for a specimen, hedge, or border, it blooms all summer. Developed in Tasmania, Australia. Bareroot

45345 Each \$18.95, Save 13%-Two \$32.95, Three \$44.95, Six \$79.00

D) 'Betty Prior'. No Rose can outbloom this great Floribunda! Elegant, 11/2- to 2-inch deep pink flowers are subtle and distinctive in color with a rich, spicy scent. The single blooms, resembling pink Dogwood flowers, appear continuously from late spring through fall, becoming deeper colored (almost red) in cooler weather. A sturdy grower, 3 to 4 feet tall, it is blessed with

unusual vigor and healthy foliage, blooming generously even after other Roses have passed their prime. An especially good performer in the South.

45001 Each \$12.95, Sci0e 11%-Two \$22.95 Three \$32.95, Six \$59.95

E) 'Reine des Violettes' Hybrid Perpetual introduced 1860. Unusual 31/2- to 41/2-inch lilac-purple blossoms glow against silvery-green foliage. Blooms repeatedly and heavily all summer on plants 6 to 8 feet tall and 4 feet across. Nearly thornless canes.

45097 Each \$14.95, Save 9%-Two \$26.95, Three \$36.95, Six \$64.95

F) 'Blanc Double de Coubert' (Rugosa), 1892. Large, open, pure white semi-double flowers, 2 to 3 inches across, are produced abundantly and ceaselessly all season long. The 6by 5-foot plants possess strong, thorny canes and rich, deeply veined foliage Excellent for shrub borders or hedges. pleasingly fragrant, and exceptionally free of disease

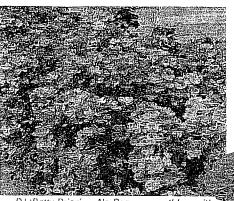
45104 Each \$12.95, Save 11%-Two \$22.95, Three \$32.95, Six \$59.95

'The Fairy' - The Superb Polyantha Rose — Hybrid Shrub. Tops for vigor, perfect health, hardiness and its super ability to produce graceful clusters of charming pink. 11/2-inch rosette blossoms from early summer until hard frost. It grows 3 feet wide and sends up rigid 3-foot canes topped with dainty blossoms: one spray is a complete bouquet which will easily last a week or more when cut. Excellent in the perennial bed, or grown in front of shrubs; unsurpassed as a perpetual-flowering low hedge for sunny areas. A nonstop bloomer to delight novice and expert gardeners alike

45032 Each \$14.95, Save 9%-Two \$26.95, Three \$36.95, Six \$64.95

WAYSIDE'S SHRUB ROSE COLLECTION 42931

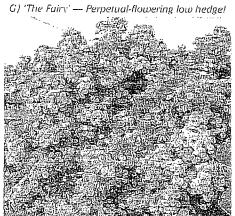
Leach of 'Carefree Wonder's, Knockout's, 'Marmalade Skies' and 'Lava Glut' (4 plants in all) A \$61.80 value for only \$44.95 Save 28%



D) Betty Prior — No Rose can outbloom it!

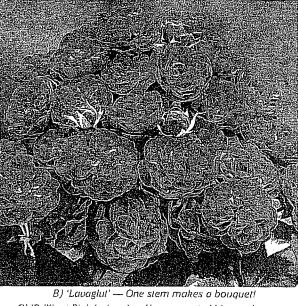


E) 'Reine des Violettes' F) 'Blanc Double de Coubert



Blooms More than Any Rose We Know!

A) 'Marmalade Skies''" — AARS Winner:



C) 'Brilliant Pink Iceberg' — Honey-scented bloom clusters



'Will Goodwin'. A true blue Clematis, der mens. Blooms are 6 to 8 inches across, abundantly be vines. Group II.

ped with frilled edges and golden sta-ne through September on 8- to 12-fool

43657 'Guernsey Cream' — An Original Wayside Introduction. Brighten dark areas with these 5-inch, glistening moonlight-yellow blossoms. Huge masses appear early, with a second flush later in summer, Ideal in containers. *Group II*.

41265 'Belle of Woking', Introduced in 1875, this rare heirloom bears fluffy, fully double, 4-inch pompons that are unlike any other large-flowered hybrid. Their delicate complexion of the palest, coolest pink fading to soft silvery-mauve is unforgettable. Great clouds appear in early summer and seem to glow in morning and at dusk. Group II.

41612 'Pink Champagne'. This free-flowering, 6- to 8-foot climber produces striking 6- to 8-inch blooms of vivid pink with cerise edging. Great for vertical spaces in the patio or small garden. Flower color may darken in hot weather. Blooms midsummer on last year's wood. Prune sparingly. Group II.

'Pillu'. For a truly distinctive look, this award-winning recent hybrid is unsurpassed! Developed by Estonian hybridizer Uno Kivistik in 1984 as a cross between the classic C. 'Hagley Hybrid' and C. Mahrouyi, it offers large, 4- to 4½-inch flowers, first in late spring to early summer on old wood, then again in late summer on young shoots! The blooms are a light violet-pink with wide purple bars, and are often double during the first bloom. Best of all, 'Pillu' flowers the first year! Very hardy and compact, this 6-foot vine is perfect for containers or for winding through shrubs and fences. Zones 4-9. Group II.

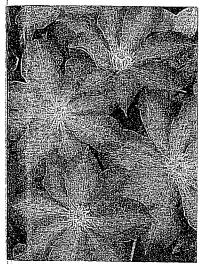
43792 'Hagley Hybrid'. This tremendous bloomer really caught our eye at the Clematis Trials at Boskoop, Holland, where it was solidly covered with flowers over a long period in midsummer. Each bloom measures 5 to 6 inches across — a delightful shell-pink with handsome purple anthers. Sepals are pointed and boat-shaped when first open. Group III.

41486 'Mrs. N. Thompson'. Remarkably beautiful, 4- to 6-inch violet-purple blooms have a pronounced red stripe down the center of each petal and striking deep red stamens. Blooms May and June, and again in September. *Group II*.

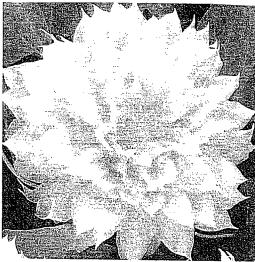
> MIX AND MATCH: All Clematis pages 64 - 67 (except C. x durandii) Each \$10.95, Save 15%-Three \$27.95, Six \$49.95, Doz. \$89.00

We offer an outstanding selection of trellisses and arbors perfect for showing off your favorite Wayside Clematis. Please see page 41.

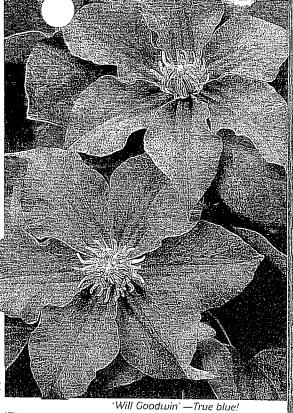
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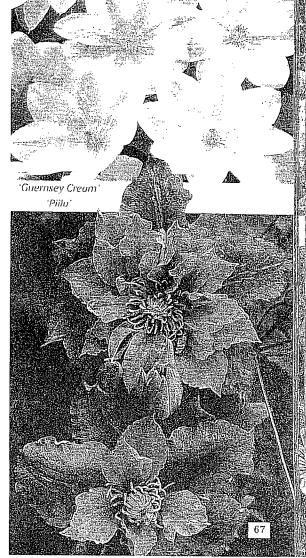


'Pink Champagne 'Mrs. N. Thompson'

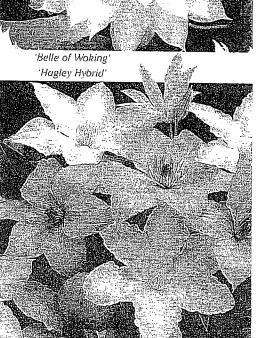


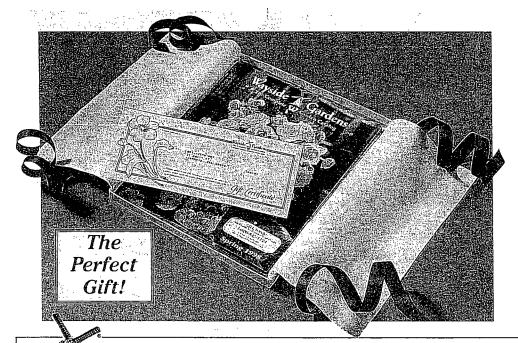












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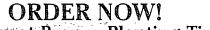
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See Order Form

Gift Certificate #9105



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We ship at proper planting time. Based on decades of experience, we begin shipping southern regions in February, immediately after nursery stock is dug and properly prepared. We move northward with spring weather, "opening" zones until even the coldest region is "opened" by early May.

Because we ship no plants or bulbs except at the season when they will transplant best in your garden, we suspend most barcroot plant and bulb shipments to Florida, the Gulf Coast, and Southern California by early May; the deep south by mid-May; and New England, the central and northern U.S. by May 31. We continue shipping many suitable container plants into June to growing areas where successful transplanting is assured. Exact dates vary depending on weather conditions. Accessories are shipped year-round.

Winter Plant Dormancy — Many of the plants you receive will arrive in dormant condition (or emerging from dormancy). This is natural to the plant. Please plant according to our directions and allow sufficient time for them to break their dormancy with the advent of spring growing weather.

Blooming Dates in this catalog and Wayside's Culture Booklet are for the New York area, but may vary a month or more, depending on latitude and climate conditions.

Ultimate Sizes and growth rates in this catalog are for "average" conditions, and may vary with different locations and growing conditions. The ultimate size noted for many new shrubs and trees are well considered estimates.

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Please order the standard Multiples Offered (3-of-one-variety etc.) — If your ordered quantity is other than the standard offer, we must increase it to the nearest increment and adjust your bill accordingly.

Substitution Service -- Inevitably, we do run out of some items each season and our customers have told us it is extremely disappointing to have an empty spot in their garden that they were counting on filling. So, we have had our horticulturists select plants to replace those that run short. We have been careful to choose comparable items of equal or greater value that will grow in the same conditions and fill the same needs in the garden as the original plants. We hope you will be pleased by this service! However, if only that one particular plant will do, just let us know when you call or mail in your order and we will gladly comply with your wishes.

Typographical Errors — Although every precaution is taken to ensure accuracy, errors in price, quantity and/or specifications may occur in printing. We reserve the right to correct such errors.

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- · Complaint resolution
- Stock availability
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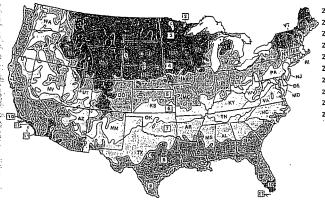
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Plant Hardiness Zones

Sage13, 100

This hardiness map was developed by the Agricultural Research Service of the U.S. Dept. of Agriculture. The zones 1-11 are based on the average annual minimum temperature for each zone. In the zone information given for each plant, the smaller number indicates the northern-most zone it can be counted on to survive the winter, and the higher number, the most southerly area it will perform consistently. Many factors such as altitude, degree of exposure to wind, proximity to bodies of water, snow cover, soil types and the like can create variations of as much as two zones in winter hardiness, while cool nights, shade and amount of water received can extend the southern limits.

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43903 'Will Goodwin'. A true blue Clematis, deeply veined with frilled edges and golden stamens. Blooms are 6 to 8 inches across, abundantly borne June through September on 8- to 12-foot vines. Group II. 41265 'Belle of Woking'. Introduced in 1875, this rare heirloom bears fully double, 4inch pompons unlike any other large-flowered hybrid. The great clouds of blooms, pale coolest pink fading to soft silvery-mauve, that appear in early summer are an unforgettable sight; they seem to glow in morning and at dusk. Group II. 4125() 'Pillu'. For a truly distinctive look, this award-winning recent hybrid is unsurpassed! Large, 4 to 41/2-inch flowers, appearing first in late spring on old wood, then again in late summer on young shoots, are a light violet-pink with wide purple bars, and are often double during the first bloom. Best of all, 'Piilu' flowers the first year! Very hardy and compact, this 6-foot vine is perfect for containers or for winding through shrubs and fences. Zones 4-9. Group II.

44555 C. montana 'Mayleen'. Rich fragrance and large (2¹/₂- to 3-inch) satiny flowers make this the best of all pink C. montana cultivars. Vigorously grows 25 to 30 feet tall with billowing pink clouds of bloom in early summer. Zones 6-9. *Group I.*

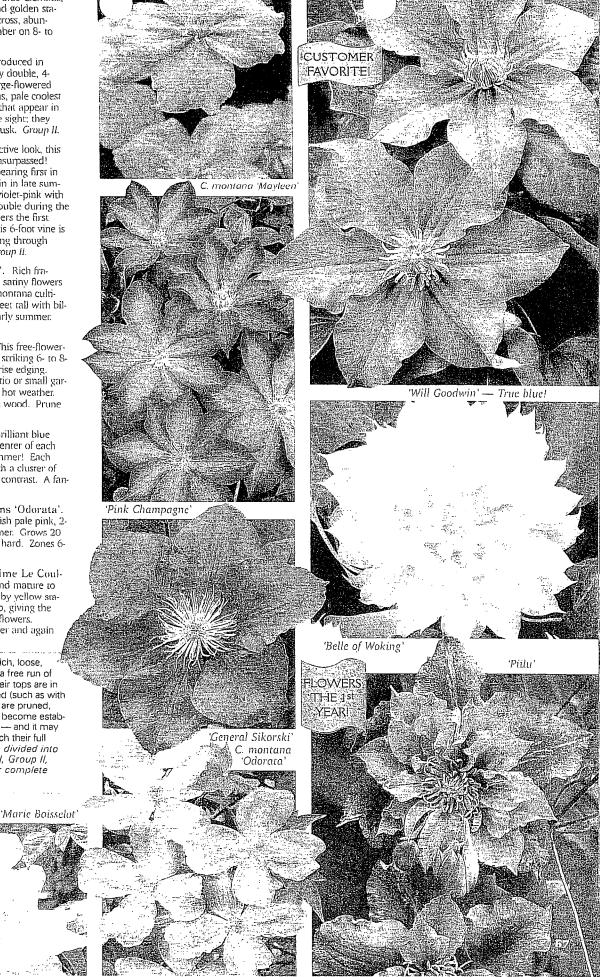
41612 'Pink Champagne'. This free-flowering, 6- to 8-foot climber produces striking 6- to 8-inch blooms of vivid pink with cerise edging. Great for vertical spaces in the patio or small garden. Flower color may darken in hot weather. Blooms midsummer on last year's wood. Prune sparingly. Group II.

43145 'General Sikorski'. Brilliant blue flowers with a hint of red in the center of each petal clothe vigorous vines all summer! Each blossom is 4 to 6 inches wide, with a cluster of cream-colored stamens for bright contrast. A fantastic grower! *Group II*.

44061 C. montana var. rubens 'Odorata'. Vanilla fragrance distinguishes lavish pale pink, 2-to 2½-inch flowers in early summer. Grows 20 to 30 feet, 10 to 15 feet if pruned hard. Zones 6-9. Group I.

44062 'Marie Boisselot' ('Mme Le Coultre'). Pale pink blooms unfold and mature to pure white, 6-inch flowers set off by yellow stamers. The 8 broad sepals overlap, giving the impression of huge, semi-double flowers. Blooms prolifically in early summer and again in fall. *Group II*.

CULTURE: Clematis prefer a rich, loose, well-drained soil that will permit a free run of the roots; they do best where their tops are in full sun, yet their roots are shaded (such as with low plants or mulch). Our plants are pruned, ready to set out. The roots must become established before top growth occurs — and it may take two or three seasons to reach their full rnagnificence. Clematis can be divided into three pruning groups: Group I, Group II, and Group III. See page 64 for complete pruning instructions.



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Mockorange ...

This hardiness map was developed by the Agricultural Research Service of the U.S. Dept. of Agriculture. The zones 1-11 are based on the average annual minimum temperature for each zone. In the zone information given for each plant, the smaller number indicates the northern-most zone it can be counted on to survive the winter, and the higher number, the most southerly area it will perform consistently. Many factors such as altitude, degree of exposure to wind, proximity to bodies of water, snow cover, soil types and the like can create variations of as much as two zones in winter hardiness, cool nights, shade and amount of water ed can extend the southern limits.

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and garden supplies. If anything proves other than

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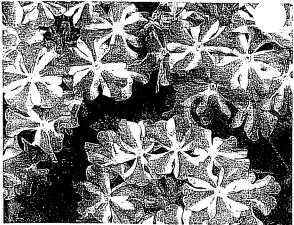
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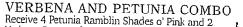
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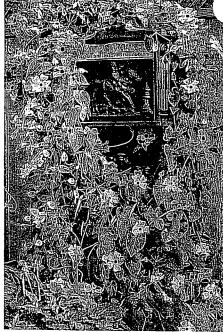
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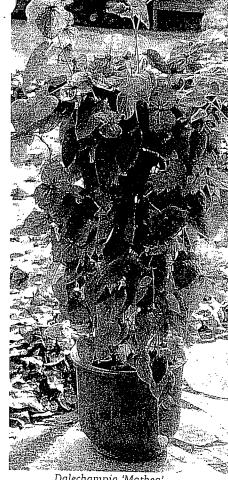


Thunbergia Sunny™ Orange

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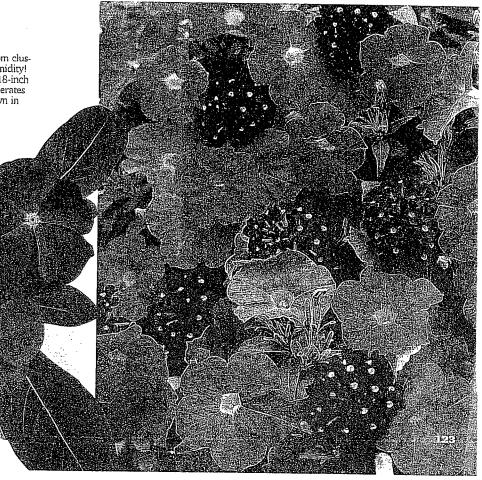
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, ,) Filed:		January 29, 2001
Applicant.)		•
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CERTIFICATE OF SERVICE

I hereby certify that OPPOSER'S TRIAL BRIEF and attached Exhibits, in triplicate, are being deposited with the United States Postal Service as first class mail on the 15th day of July, 2005, in an envelope addressed: Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451, with a copy being sent first class mail, postage prepaid, to Mr. Brian Brookey, counsel for applicant, at the law firm of Christie Parker & Hale, 350 W. Colorado Blvd., Suite 500, Pasadena, CA 91105.

Dated: July 15, 2005

Barry C. Kane

Attorney for Opposer

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Telephone: (616) 726.5905

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PRIDE OF PLACE PLANTS, INC.,)	Serial No.:	76,201,447
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REQUEST FOR ORAL HEARING

Opposer, Walters Gardens, Inc., by and through its attorneys, hereby requests an oral hearing pursuant to Rule 2.129(a) of the Trademark Rules of Practice.

Dated: July 15, 2005

By Barry C. Kane

Attorney for Opposer

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PRIDE OF PLACE PLANTS, INC.,	Serial No.:	76,201,447
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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 2005, I served a true copy of the above REQUEST FOR ORAL HEARING on the attorneys for applicant, by depositing a copy thereof in the United States mail, first class, postage prepaid, in an addressed to Mr. Brian Brookey at the law firm of Christie Parker & Hale, 350 W. Colorado Blvd., Suite 500, Pasadena, CA 91105.

Dated: July 15, 2005

By Barry C. Kane

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